



Association of Northwest Steelheaders

6641 SE Lake Rd. • Milwaukie OR 97222

503-653-4176 • 503-653-8769 (fax)

office@anws.org • www.nwsteelheaders.org

Established 1960

January 30, 2019

Testimony submitted on HB 2437

House Committee on Agriculture and Land Use

Thank you for the opportunity to provide testimony on HB 2437. My name is Brian McLachlan and I am a volunteer with, and providing testimony on behalf of, the Association of Northwest Steelheaders (Northwest Steelheaders).

Northwest Steelheaders is a non-profit recreational fishing and conservation organization with eleven chapters in Oregon and Southwest Washington. Northwest Steelheaders was founded in 1960 to represent the interests of recreational anglers and advocate for robust populations of salmon and steelhead. These fish are vitally important to the economy, ecology, culture, and identity of the Northwest. The impact of land use practices, including agricultural channel drainage maintenance, on fish, wildlife, public lands and waters, cultural values, and recreation is an important topic to our members, and we write to ensure that these interests and values are protected.

During the past year, I participated on behalf of the Northwest Steelheaders in the Oregon House Committee on Agriculture and Land Use's Wetlands Work Group. One of the objectives of the Work Group was to develop proposed regulations that would allow for more effective and practical maintenance of agricultural drainage channels (including channelized streams), while ensuring protection of natural resources consistent with State of Oregon conservation and recovery policies, plans and commitments. We appreciate the efforts the Work Group's co-chairs and participants put forth to address this challenging objective. Unfortunately, as reflected in the Work Group's discussions and materials, stakeholder participants did not reach agreement on key elements of a path forward.

As a recreational fishing and conservation organization, our paramount concern is to ensure that the regulatory framework governing agricultural drainage channel maintenance is consistent with, and supports, broad-based recovery of our imperiled salmon and steelhead populations, and the habitats upon which those populations depend.

Based on these concerns, and the considerable uncertainty about how the channel and stream dredging activities authorized by HB 2437 could negatively impact salmon habitat, we cannot support HB 2437 as introduced at this time.

HB 2437 would change the current permit-based removal/fill maintenance dredging regulatory framework to a notice-based system, with an exponential "one-size-fits-all"¹ increase in the volume of dredged material that may be excavated from salmon-bearing waterways without a permit.² The bill would allow these dredging activities to occur without any meaningful oversight or involvement of the Oregon Department of Fish and Wildlife (ODFW).³ And, to our



Association of Northwest Steelheaders

6641 SE Lake Rd. • Milwaukie OR 97222

503-653-4176 • 503-653-8769 (fax)

office@anws.org • www.nwsteelheaders.org

Established 1960

knowledge, there has been no science-based evaluation of the potential extent and magnitude of impacts this increased dredging would have on salmon habitat. In this regard, the bill's provisions appear to be inconsistent with State of Oregon policies and conservation plans,⁴ as well as federal ESA recovery plans.^{5 6}

As the legislature and Oregonians know all too well, many of our salmon and steelhead populations are in dire straits and listed under the Endangered Species Act. For many populations, a primary cause of their precipitous declines – and a limiting factor for their recovery – is the destruction or adverse modification of habitat, including essential off-channel areas such as low-gradient intermittent streams and channels found on agricultural lands. These relatively small, seasonally dry streams and channels provide important nursery and refuge habitat for juvenile salmon (and other native fishes and amphibians), especially during late-fall, winter and spring periods when mainstem river flows are high, cold, and turbid, and generally less hospitable to juvenile salmon rearing.

Increased dredging in these seasonal channels and streams to excavate accumulated sediments, vegetation and woody debris, even if done during a “dry” period as provided in HB 2437, may have significant adverse impacts on the function, complexity, and productivity of this habitat.

The bill implicitly acknowledges these potential impacts and the lack of an environmental evaluation by directing Oregon State University to complete a study of channel maintenance dredging impacts by 2025. In this regard, however, the bill puts “the cart before the horse” by allowing a state-wide exponential increase in dredging volume before there is a science-based evaluation of the magnitude and extent of potential impacts. In our view, this “dredge first, answer questions later” approach is not consistent with the State’s salmon recovery objectives nor good public policy.⁷

While we are aware of the shortcomings of the current agricultural channel maintenance regulatory process and the apparent lack of compliance, we recommend that prior to substantially amending the removal/fill statute, the legislature authorize and fund a pilot research program of limited scope and duration designed to study the impacts of channel maintenance activities on salmonid habitat and conservation and recovery plan objectives. A primary goal of this research program would be to develop a suite of Best Management Practices (BMPs) (tailored to area- and/or site-specific ecological functions and conditions) and other recommendations that meet the needs of both farmers and fish.⁸

Until this pilot research program is completed, we recommend that salmonid habitat be excluded from the operation of HB 2437.⁹ In areas outside salmon habitat, we recommend that dredging removal volumes be modest and cumulatively limited within a waterbody. Additionally, ODFW should be given sufficient notice of planned maintenance activities and authority to meaningful work with farmers and the Oregon Department of Agriculture where it determines that potential impacts may be significant.



Association of Northwest Steelheaders

6641 SE Lake Rd. • Milwaukie OR 97222

503-653-4176 • 503-653-8769 (fax)

office@anws.org • www.nwsteelheaders.org

Established 1960

The Northwest Steelheaders appreciate the importance of farms, farming families, and farming communities to the economic vitality and social fabric of Oregon. And we acknowledge that drainage maintenance is a significant issue on agriculture lands. Agricultural practices, just like many other activities impacting natural resources, have evolved, and will need to continue to evolve, in response to new information, new science, and changing societal values and priorities, including State and Federal policies and commitments to the survival and recovery of imperiled salmon and steelhead.

On this point, we emphasize what the State of Oregon, ODFW, and National Oceanic and Atmospheric Administration (NOAA) have stressed: “We cannot achieve recovery of salmon and steelhead [] while continuing the past and current practices that degrade salmon and steelhead habitat.”^{10 11}

The Northwest Steelheaders believe that if a scientifically-sound evaluation is completed, and science-based BMPs are developed, then an efficient and effective drainage maintenance regulatory framework can be implemented in a manner that satisfies the needs of both farmers and fish. We welcome the opportunity to continue to work on this issue with you, and all stakeholders, to find a viable path forward.

Thank you for considering our testimony.

Best regards,

Brian McLachlan

Brian McLachlan

On behalf of the Association of Northwest Steelheaders

¹ There are a variety of factors that may affect salmonid use of agricultural drainage channels and streams and the impact dredging may have on such use. For example, drainage channels and channelized streams on the coast are used extensively by coho, whereas in the Willamette Valley, spring Chinook are the main salmon species of concern using these areas. Differing regions; hydrology; geology; vegetation types (such as reed canary grass) and amount; channel width, depth, length and type; sediment source and amount; substrate; flow origin (drainage, spring, mixed, natural surface); distance from perennial streams; upland and adjacent land use; riparian and in-channel cover (including large woody debris); macroinvertebrate population status; salmonid life histories; maintenance/dredging frequency; etc., may all potentially impact salmonid use and response to dredging. A channel maintenance prescription that works well for farmers and fish in one region, watershed or sub-watershed, or for one type of stream or channel condition, may not work well for others. Although a “one-size-fits-all” approach may provide administrative consistency, it may do so at the expense of ecological function and productivity.

² Currently, farmers may dredge and remove up to 50 cubic yards per year of material from a channel without obtaining a permit. According to an older Department of State Lands flyer, this volume of material equates to about four to five dump truck loads. DSL, *Salmon Habitat*



Association of Northwest Steelheaders

6641 SE Lake Rd. • Milwaukie OR 97222

503-653-4176 • 503-653-8769 (fax)

office@anws.org • www.nwsteelheaders.org

Established 1960

Protection General Information. HB 2437 would increase this amount to 3000 cubic yards per linear mile of channel (notwithstanding the width of the channel) per five years. This amounts to about 240-300 dump truck loads for each mile of channel habitat. Another way to visualize 3000 cubic yards is this – imagine a channel about 7 ½ feet wide, 2 feet deep, and one mile long. (1 cubic yard = 27 cubic feet. 3000 cubic yards = 81,000 cubic feet. 5280 feet = one mile. $7.67 \times 2 \times 5280 = 81,000$). Many intermittent channels and streams (i.e., channels and streams that seasonally go dry) are small in channel width. Think, for example, about the width of a typical roadside drainage ditch or small creek bed that may go dry during the summer months, but hold considerable water (and fish) during the winter and spring.

³ In order to ensure that channel maintenance dredging activities minimize impacts to salmonid habitat we recommend, at minimum, that ODFW district biologists review all channel maintenance notices and that ODA actively seek their response. We also recommend notice and comment opportunities be provided to applicable Tribes and Watershed Councils, as well as NOAA-Fisheries. We understand there is precedent at DSL for such procedures.

⁴ See e.g., Oregon Coast Coho Conservation Plan for the State of Oregon, Appendix 3 -- Description of Oregon and Federal Commitments, March 16, 2007, p. 84 (indicating that “50 cubic yard exemption to the Removal-Fill Law does not apply in ESH-designated streams”; that all “Oregon Coast Coho streams have been designated ESH”; and emphasizing that ODFW has an opportunity to review all removal/fill permit applications and to request project specific conditions be included in DSL permit authorizations) (emphasis added); p. 80 (committing that “[a]ll removal-fill permits issued by DSL [will] include general and project-specific conditions that are intended to ensure the protection of the state’s water resources and prevent harm to fisheries.”) (emphasis added), available at https://www.dfw.state.or.us/fish/CRP/docs/coastal_coho/final/Appendix3.pdf.

⁵ See e.g., NMFS (National Marine Fisheries Service). 2016. Recovery Plan for Oregon Coast Coho Salmon Evolutionarily Significant Unit. National Marine Fisheries Service, West Coast Region, Portland, Oregon, p. 6-57, table 6-8 (improving state agricultural practices by disallowing stream channel dredging in ESA-listed coho streams flowing through or adjacent to agricultural lands listed as a high priority action to restore coho habitat in tributaries), available at https://www.westcoast.fisheries.noaa.gov/publications/recovery_planning/salmon_steelhead/domains/oregon_coast/final_oc_coho_recovery_plan.pdf.

⁶ By authorizing substantially increased dredging removal volumes, HR 2437 may potentially lead landowners to take actions that run afoul of ESA regulations by modifying listed salmon habitat in a way that harms salmon by significantly impairing essential behavioral patterns, including breeding, spawning, rearing, migrating, feeding or sheltering. See 50 CFR 222.102. The Federal government has identified farming, dredging, ditching, draining and altering stream channels as activities that could result in violation of the ESA’s “take” prohibitions. 73 Fed. Reg.



Association of Northwest Steelheaders

6641 SE Lake Rd. • Milwaukie OR 97222

503-653-4176 • 503-653-8769 (fax)

office@anws.org • www.nwsteelheaders.org

Established 1960

7816, 7830 (Feb. 11, 2008); 70 Fed. Reg. 37160, 37196 (June 28, 2005). We recommend the State request NOAA to engage in a discussion of this issue.

⁷ This approach also provides a perverse incentive for farmers to dredge as much as possible, as fast as possible, in order to avoid potential future regulations enacted in response to the study.

⁸ We additionally recommend that an inventory and/or maps be prepared of streams and channels potentially falling within the definition of “traditionally maintained channels” to give the legislature, agencies, stakeholders, and the public a better understanding of the geographic scope of the issue.

⁹ State Essential Salmonid Habitat (ESH) designations and maps may be viewed as a proxy for salmonid habitat. However, by definition ESH only includes habitat of State and Federally listed species and is thereby under inclusive. Current ESH designations may also fail to include drainage channels utilized as habitat by salmonids. In addition, should any species be delisted, such as Oregon Coast coho, its habitat would no longer be designated as ESH, which could result in significant salmonid habitat being subject to increased dredging activities.

¹⁰ Oregon Department of Fish & Wildlife, The State of Oregon, NOAA Fisheries, Upper Willamette River Conservation & Recovery Plan for Chinook Salmon & Steelhead, Executive Summary, August 2011, p. 11, available at: https://www.dfw.state.or.us/fish/CRP/docs/upper_willamette/UWR%20FRN2%20Exec%20Sum%20final.pdf.

¹¹ The State of Oregon, Federal government, various NGOs, and private citizens have invested significant time and many millions of dollars toward the goals of Oregon coast coho recovery and ESA delisting. NOAA’s most recent 5-year status review indicates the State’s regulatory mechanisms concerning coho habitat on private agricultural lands remain a concern. Similarly, NOAA’s coho recovery plan (discussed above) specifically lists as a high priority action that state agricultural practices be improved by disallowing stream channel dredging in coho streams. HR 2437 appears to run counter to this recovery priority and backtrack on the State’s prior commitments to protect coho habitat. The bill may thus impede the State’s ESA delisting objective. We suggest the State evaluate, and consult with NOAA regarding, HR 2437’s potential impact on efforts to delist Oregon Coast coho.