



January 31, 2019

Representative Brian Clem, Chair
House Agricultural and Land Use Committee

Re: House Bill 2437

Dear Chair Clem and Members of the Committee,

Thank you for the opportunity to provide comment on the House Bill (HB) 2437. Trout Unlimited (TU) is a non-profit conservation organization dedicated to the conservation of coldwater fishes, such as trout and salmon, and their habitats. TU has more than 300,000 members and supporters nationwide including over 3,000 in Oregon. TU and its members have a strong interest in ensuring that the values and functions of wetlands and streams are appropriately protected by regulatory programs. Streams and wetlands provide valuable habitat for many important fish and wildlife species. Additionally, wetlands can provide other critical ecosystem services such as water quality filtration.

TU also has an interest in ensuring that the regulatory process for agricultural channel maintenance is clear, effective and widely-used. TU's Oregon Water Project works throughout Oregon with ranches, farms and agencies to address water needs for both the environment and agriculture and has first-hand experience with the current removal/fill permitting process. TU recognizes that the individual permit process is complex, time-consuming and currently under-utilized by the agricultural sector. TU also recognizes that the average agricultural producer requires more than 50 cubic yards/year (the current permit exemption amount) to adequately maintain agricultural channels.

TU had the opportunity to participate on the Agricultural Channel Maintenance Sub-Workgroup (Workgroup). The Workgroup did not ultimately articulate a path forward that was agreeable to all interests however many elements of a potential solution were identified and substantive dialogue around the costs/benefits of various approaches occurred. A significant challenge to the Workgroup in its attempts to articulate a broadly supported path forward was the lack of information regarding the specific impacts of channel maintenance on fish and wildlife habitat function and complexity over both the short and long-term. Existing scientific information documents that these channels can provide important habitat for fish and wildlife however it is less well understood how removal of various fill volumes in different channel types and sizes in different geographies affects the functions and values that these habitats can provide.

HB 2437 does succeed at producing a simplified process for agricultural channel maintenance however it does not contain sufficient safeguards to minimize risk to fish and wildlife resources from these activities. Accordingly, HB 2437 should be amended consistent with TU's recommendations below to provide meaningful relief to agricultural producers while minimizing risk to fish and wildlife/ecological resources in the near-term and ensuring protection/enhancement of stream and wetland functions and values over the long-term.

Legislative Findings: TU recommends that the legislative findings in Section 2(a) be modified to better emphasize the dual goals that should be achieved by the program. TU's suggested language is italicized below.

The program will be adaptively managed over time as implementation occurs, with the dual purpose of creating a workable process for the agricultural community, and improving the ecological and life-history functions of Oregon's fish and wildlife in waters of this state.

Volume and Adaptive Changes: TU recommends that the removal volume limit be modified from 3,000 cubic yards/linear mile to 300 cubic yards/linear mile. This represents a meaningful increase over the existing exemption amount and would help ensure that impacts to fish and wildlife are minimized while the scientific study proceeds. TU supports modification of this volume limit via rule after the scientific study is completed if relevant agencies (Oregon Department of Agriculture (ODA), Department of State Lands (DSL) and Oregon Department of Fish and Wildlife (ODFW)) agree that the change meets the dual goals mentioned in the Legislative Findings above. TU also suggests that the notice-based process could be used for higher volume limits (above 300 cubic yards/linear mile) prior to study completion if ODFW is provided the opportunity for consultation and site visit and can convey additional site-specific recommendations to the implementing agencies when significant resource concerns are present.

Exclusions: TU generally supports the bill's "dry" channel notice authorization process. To minimize risk to resources and protect existing habitat function, Essential Salmon Habitat (ESH) areas should be excluded as well as tidal waters. These areas are more likely to present resource concerns that may warrant a closer review and potentially site-specific conditions.

Agency Roles: The bill should further clarify ODFW's role in the notice authorization process. TU believes the program will be utilized at a higher rate if ODA is the primary implementer and the face of the program. However, DSL, ODA and ODFW should have co-equal roles articulating any adaptive management changes (including volume changes). Additionally, ODFW should have opportunities to review notices and accompany ODA on site visits when needed. The legislation notes that ODA and DSL should enter into a MOA to better delineate implementation duties. TU suggests that ODFW should be included in that MOA also.

Notice Process: Many details discussed in the Workgroup were not included in the bill that relate to how the notice process would be implemented. In particular, TU suggests that the bill clarify that there will be a set period of time from when a notice is submitted to when implementation activities can begin to ensure agencies adequate time to review and resolve any questions/discrepancies. TU suggests that a 45-day window be utilized. A similar waiting period is required for activities covered under the notice-based General Authorization process.

Study: TU appreciates that the bill includes a directive for a study that will assess the impacts of channel maintenance activities on habitat complexity and other biological parameters at varying volumes, geographies and channel conditions. This piece of the legislation is critical to ensuring that the program is science-based, credible and truly meeting the dual needs of the program.

Thank you for the opportunity to provide feedback on HB 2437. TU is happy to discuss its proposed changes and looks forward to continued discussions on this issue.

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