

Date of Hearing: April 1, 2024

ASSEMBLY COMMITTEE ON TRANSPORTATION

Lori D. Wilson, Chair

AB 2558 (Hart) – As Introduced February 14, 2024

SUBJECT: Department of Transportation: projects: fish passage

SUMMARY: Extends the requirement that the California Department of Transportation (Caltrans) report annually on its progress remediating barriers to fish passage until October 31, 2030 and requires that Caltrans' development of a programmatic environmental review process for these barriers be completed by January 1, 2026. Specifically, **this bill:**

- 1) Expands the prohibition of the construction or maintenance of any device or contrivance in any stream that prevents, impedes or tends to prevent or impeded, the passing of fish up and down stream in certain fish and game districts—to statewide.
- 2) Requires Caltrans' annual report on fish passage barriers to include a justification for reprioritization or delay in remediation of barriers.
- 3) Extends Caltrans' annual reporting requirement on fish barriers from October 31, 2025 to October 31, 2030.
- 4) Requires Caltrans to implement a programmatic environmental review process with appropriate state and federal regulatory agencies for remediating barriers that will streamline the permitting process for projects no later than January 1, 2026. Expands Caltrans' requirement to assess a project's impact on stream crossings where anadromous fish are, or were found, to include stream crossings adjacent to, or with a nexus and requires Caltrans to remediate the problem of fish passage by removing the barrier and to remedy it at the time of the project's construction.

EXISTING LAW:

- 1) States it is unlawful to construct or maintain in any in any stream in the California Department of Fish and Wildlife (CDFW) Districts 1, 13/8, 11/2, 2, 21/4, 21/2, 3, 31/2, 4, 41/8, 41/2, 43/4, 11, 12, 13, 23, and 25, any device or contrivance that prevents, impedes, or tends to prevent or impede, the passing of fish up and down stream. (Fish and Game Code 5901)
- 2) Requires Caltrans to prepare an annual report describing the status of the department's progress in locating, assessing, and remediating barriers to fish passage, through the year 2025. (SHC 156.1)
- 3) Requires Caltrans to pursue development of a programmatic environmental review process with appropriate state and federal regulatory agencies for remediating barriers to fish passage that will streamline the permitting process for projects, and include a description of its progress on this review process in the annual report on fish barriers. (SHC 156.2)

- 4) For projects that affects a stream crossing, requires Caltrans to complete an assessment of potential barrier to fish passage prior to commencing project design, and submit the assessment to CDFW. (SHC 156.3)
- 5) Requires Caltrans to remediate the barrier to fish passage in the project implementation, in consultation with CDFW. (SHC 156.3)
- 6) Specifies that new projects shall not present a barrier to fish passage. (SHC 156.3)
- 7) For projects identified by CDFW as the most significant barriers to fish passage, requires CDFW to prioritize and expedite the remediation of barriers to fish passage on projects identified. (SHC 156.5)
- 8) Allocates \$5 million for the 2015-16 fiscal year from the State Highway Account in the State Transportation Fund to Caltrans for the identification and remediation of high-priority fish passages. (SHC 156.5)

FISCAL EFFECT: Unknown

COMMENTS: Salmon are central to California's ecology and economy, as well as the cultures and religions of Indigenous peoples along the Pacific Coast. Salmon and other salmonid species are migratory fish, moving from large salt- or freshwater bodies to smaller freshwater streams in order to reproduce. Over the last two centuries, salmon populations have declined due in part to changes in water quality and infrastructure that obstruct their annual migrations, or "runs".

Man-made barriers to salmonid migration include road/stream crossings, irrigation diversions and dams. Road/stream crossings are extremely numerous and often cross multiple road ownerships within a watershed. Passage impediments and delays in migration affect both adult and juvenile fish. Given the magnitude and severity of the problem, reconnecting isolated stream habitat has become an important priority for the restoration of impaired anadromous salmon and steelhead stocks.

Caltrans is required to remediate barriers to salmon and steelhead habitat on the State Highway System (SHS), and provide a report to the Legislature each year that provides information on progress for the previous year. Caltrans is required to track and provide information on; crossing assessments, district and Fish Passage Advisory Committee (FishPAC) biological priorities, information for remediated barriers, and status of locations currently in project delivery.

Improving fish passage on the SHS requires a comprehensive approach focused on science and data, engineering, training, permitting, research, funding, multi-species and habitat benefits, and partnerships, because of complex considerations associated with successful fish barrier remediation. Caltrans has improved fish passage coordination and partnering across California through FishPAC, which include staff from CDFW and the National Marine Fisheries Service, as well other remediation partners. The Interagency Fish Passage Engineering Working Group and the Fish Passage Leadership Action Team continue to identify and work toward improved understanding and application of successful fish passage remediation work in California. A comprehensive fish passage program is vital towards identifying, prioritizing, and treating migration barriers so that unimpeded migration of California's salmonid populations is achieved.

FishPAC consists of six major areas throughout the state, which is comprised of 10 Caltrans districts. (Caltrans districts 8 and 9 are not included, since they have no anadromous fish.) Their mission is to address complex challenges related to fish passage barrier remediation, to support effective and innovative engineering solutions, and to incorporate sound science and data into FishPAC decisions. FishPAC advances the remediation of fish passage barriers on the SHS, and promotes collaborative inter-jurisdictional solutions, to ensure that barriers are assessed and documented prior to project planning and initiation.

Inconsistency in fish barrier reporting and remediation. Although Caltrans is mandated to do so annually, the last fish barrier report to the Legislature was completed in 2020. According to this report, Caltrans completed 510 fish passage assessments at road/stream crossings. Of those assessments, the following was identified: 13 new barriers, 62 non-barriers, and 435 locations as potential barriers which need additional surveys.

In January 2023, critical steelhead habitat in Gaviota Creek along U.S. 101 in Santa Barbara County, came under scrutiny after emergency work destroyed a section of SHS that Caltrans and the Coastal Ranches Conservancy had been working on over the past 10 years to improve for fish passage. According to the Caltrans emergency project species relocation summary, multiple deaths of juvenile steelheads and other aquatic animals occurred due to poor capture methods during the emergency work. The Coastal Ranches Conservancy believes it could take years to recover from the damage to the creek bed and steelhead passage.

This bill seeks to strengthen existing requirements for Caltrans to remediate and report on barriers to fish passage by requiring barrier remediation statewide, requiring Caltrans' reporting to include a justification for any reprioritization or delay in the remediation of barriers, and extending Caltrans' reporting from 2025 to 2030.

Salmon Strategy. In January 2024, Governor Newsom announced new efforts to help restore California's salmon populations amidst hotter and drier weather exacerbated by climate change. The six priorities of the Governor's salmon strategy include; removing barriers and modernizing infrastructure for salmon migration, restoring habitat, protecting water flows in key rivers at the right times, modernizing hatcheries, transforming technology and management systems, and strengthening partnerships.

Remediating fish passage barriers is key to enhancing connectivity in California's watersheds. Providing access to upstream habitats will ensure that fish populations can respond and adapt to climate change stressors, such as drought, wildfire, sea level rise, changes in stream flow, and water temperature. Over 200 fish passage experts, advocates, and partners throughout the range of salmon and steelhead habitat work collaboratively to address legacy transportation barriers with long-term solutions that facilitate fish passage and climate resilience.

This bill seems to align with the Governor's Salmon Strategy.

According to the author, "As a result of climate change and human disruption, salmon and steelhead trout populations have declined in California. These aquatic animals play an important role in maintaining the State's water quality and ecosystem. AB 2558 will strengthen existing law on removing fish passage barriers to restore salmon and steelhead trout populations, furthering the State's efforts to conserve California's lands and coastal waters."

In support, California Trout writes, “By including updates on the progress towards reconnecting crucial freshwater corridors and fish habitat in the agency's annual reporting, this bill will strengthen the State’s efforts to protect California's rich biodiversity, and particularly its highly imperiled freshwater fishes.”

Previous legislation. AB 1760 (Committee on Water, Parks, and Wildlife), Chapter 132, Statutes of 2023 makes numerous technical and non-substantive changes to the Fish and Game Code to improve organization and clarity, remove obsolete or redundant material, and other technical clarifications and corrections, among other provisions.

AB 95 (Committee on Budget), Chapter 12, Statutes of 2015 makes statutory changes related to transportation that are necessary to implement the 2015-16 budget package, including \$5 million State Highway Account funds for the remediation of fish passage barriers caused by state highways and requires Caltrans to report on the progress of remediating barriers to fish passage.

SB 857 (Kuehl), Chapter 589, Statutes of 2005, requires Caltrans to complete an assessment and remediate any potential barriers to anadromous fish, such as salmon and trout, before commencing a transportation project. Caltrans must provide an annual report to the Legislature on the progress of identifying, assessing, and addressing obstacles that impact the flow of water for salmon and trout.

REGISTERED SUPPORT / OPPOSITION:

Support

California Trout
Clean Earth 4 Kids
Coastal Ranches Conservancy
Defenders of Wildlife
Environmental Defense Center
Friends of the LA River
Friends of the River
Friends of the Santa Clara River
Midpeninsula Regional Open Space Center
North County Watch
Planning and Conservation League
Santa Clarita Organization for Planning and The Environment
Save Open Space & Agricultural Resources
Sierra Club California
Sonoma Land Trust
Southwest Council, Fly Fishers International
Stewards of the Arroyo Seco
Stoecker Ecological
The Nature Conservancy
Trout Unlimited

Opposition

None on file

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