

## APPENDIX B

### Oregon Revised Statutes Fish Passage

**ORS 498.351 Fishway required for artificial obstruction across body of water.** (1) Except as otherwise provided by law, no person shall construct, operate or maintain any dam or artificial obstruction across any body of water in this state in which **game fish** exist unless the person provides a fishway in such location and of such design as the State Fish and Wildlife Commission determines will provide adequate upstream and downstream passage for fish at the dam or obstruction.

(2) If the State Fish and Wildlife Commission determines that a fishway required by subsection (1) of this section does not provide adequate passage for fish, the State Fish and Wildlife Commission shall so notify the person who constructed or who operates or maintains the dam or obstruction. The notice shall also specify the manner in which the fishway is inadequate, and shall require the person who constructed or who operates or maintains the dam or obstruction to make appropriate alterations, specifying a reasonable time for the completion thereof.

(3) A person required to alter a fishway pursuant to subsection (2) of this section may file with the Water Resources Commission a protest against the alteration requirements on the grounds that such alterations are not in the public interest. A person who protests pursuant to this subsection must file the protest with the Water Resources Commission not later than the 10th day after the date of the notice of alteration requirements from the State Fish and Wildlife Commission.

(4) Within a reasonable time after receiving a protest, the Water Resources Commission shall give notice to the protestant and the State Fish and Wildlife Commission and hold a hearing to determine whether the fishway alterations are in the public interest. In making the determination, the Water Resources Commission shall approve, disapprove or approve with modifications the fishway alterations required by the State Fish and Wildlife Commission. In making the determination, the Water Resources Commission shall consider the state water resources policy and the considerations set forth in ORS 536.310<sup>1</sup>.

(5) If the person required by this section to make alterations to a fishway fails to make the alterations in the manner and within the time required by the State Fish and Wildlife Commission or the Water Resources Commission, as the case may be, the State Fish and Wildlife Commission may remove the dam or obstruction, or any parts thereof.

(6) No person who has constructed or who operates or maintains a dam or artificial obstruction for which a fishway is required by this section shall fail to keep the fishway free from obstruction to the passage of fish. However, no prosecution for violation of this subsection shall be commenced unless the violation continues after the State Fish and Wildlife Commission has given written notice of the violation to the person who is to be prosecuted. Every day of violation of this subsection after the date written notice was given to the person to be prosecuted constitutes a separate offense.

<Formerly 498.268>

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<sup>1</sup>Purposes and policies to be considered in formulating state water resources program

**ORS 509.605 Fishways required over artificial obstructions; approval by director; failure to complete fishway.** (1) Except as otherwise provided in ORS 498.351<sup>2</sup> or 509.640<sup>3</sup> or 509.645<sup>4</sup> or the state water resources policy formulated under ORS 536.295<sup>5</sup> to 536.350<sup>6</sup>, it is unlawful for any person, municipal corporation, political subdivision or governmental agency to construct or maintain any dam or artificial obstruction across any stream in this state frequented by **anadromous or food fish** without providing a passageway for such fish over the dam or artificial obstruction as near the main channel as practicable.

(2) The director shall examine, from time to time, all dams and artificial obstructions in all waters of this state frequented by anadromous or food fish. If in the opinion of the director there is not a free passage for such fish over any dam or artificial obstruction, and except as otherwise provided in ORS 509.640, the director may notify the owner or occupant thereof to provide free passage within a reasonable time with a durable and efficient fishway, of such form and capacity and in such location as shall be determined by the director. Except as otherwise provided in ORS 509.645, no owner or occupant of such dam or artificial obstruction shall fail to complete such fishway to the satisfaction of the director within the time specified.

(3) Any person, municipal corporation, political subdivision or governmental agency shall, prior to construction of any dam or artificial obstruction in any waters of this state, obtain a determination from the director as to the need or lack of need for passage for anadromous or food fish. If the director determines that a fish passage facility is needed, approval of the proposed plans and specifications for such facility must be obtained from the director prior to construction of the dam or artificial obstruction.  
<Amended by 1955 c.707 s49; 1963 c.178 s1; 1965 c.570 s131; 1973 c.723 s123>

**ORS 509.610 Maintenance of fishway required.** (1) Subject to ORS 509.645<sup>7</sup>, when the director requires a fishway to be provided pursuant to ORS 509.605<sup>8</sup>, the owner or occupant of a dam or artificial obstruction shall keep the fishway in repair and open and free from obstruction to the passage of anadromous or food fish at all times.

(2) Each day of neglect or refusal to comply with subsection (1) of this section, after notification in writing by the director, constitutes a separate offense.

<Amended by 1955 c.707 s52; 1965 c.570 s132>

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<sup>2</sup>Fishway required at artificial barrier; game fish

<sup>3</sup>mitigating/substituting with a hatchery

<sup>4</sup>Protests to WRC

<sup>5</sup>Conditions for uses additional to those for which waters classified in basin program

<sup>6</sup>Delivery of water resources statement to certain public bodies

<sup>7</sup>Filing protest with Water Resources Commission

<sup>8</sup>Fishways required over artificial obstructions

**ORS 509.620 Condemning inadequate and ordering new fishways.** Where in the judgment of the commission, any fishway is inadequate, as constructed under ORS 509.605 or otherwise, the commission may condemn the fishway and order a new fishway installed in accordance with plans and specifications determined by the commission.

**ORS 509.625 Power of commission to inspect artificial obstructions and have fishways constructed.** (1) The commission may determine or ascertain by inspection of any dam or artificial obstruction whether it would be advisable to construct, or order the construction pursuant to ORS 509.605 by the owners thereof, of fishways over the dam or obstruction. The commission may construct or order the construction, pursuant to ORS 509.605, of such number of fishways in any stream inhabited by anadromous or food fish as is deemed adequate to provide a good and sufficient passageway for such fish.

(2) Where a fishway has heretofore been constructed with or without the approval of the commission and has proved useless or inadequate for the purposes for which it is intended, the commission may improve or rebuild such fishway. However, such construction or reconstruction shall not interfere with the prime purpose of the dam or obstruction. This subsection shall not be construed to require the improvement or rebuilding of fishways by the commission.

<Amended by 1955 c.707 s53; 1963 c.232 s1; 1965 c.570 s133>

**ORS 509.640 When dams to be provided with hatchery facilities.** (1) If in its opinion the height of a dam in any of the rivers or streams of this state will make a fish ladder or fishway thereover impracticable, the commission, in lieu of the requirement of a fishway under ORS 509.605 (2) and subject to ORS 509.645, may require that the owner of the dam:

(a) Convey to the state a site of the size and dimensions satisfactory to the commission, at such place as may be selected by the commission.

(b) Erect thereon a hatchery and hatchery residence, according to plans and specifications to be furnished by the commission.

(c) Enter into an agreement with the commission, secured by a good and sufficient bond, to furnish all water and light, without expense, to operate the proposed hatchery.

(2) Except as otherwise provided in ORS 509.645, no owner of the dam shall fail to comply with subsection (1) of this section to the satisfaction of the commission within a reasonable time specified.

(3) This section does not apply to:

(a) Dams constructed prior to February 18, 1921, in streams to a height where the construction of a fish ladder is impracticable, provided an agreement has been entered into and executed with reference to the construction and maintenance of such dam between the commission and the owners thereof.

(b) Dams, for the construction of which permits have been granted by the commission under this section as it existed prior to the 1955 amendment of this section. Such dams are subject to and governed by this section as it existed prior to the 1955 amendment of this section.

<Amended by 1955 c.707 s54>

**ORS 509.645 Filing protest with Water Resources Commission; review and determination by Water Resources Commission as to whether fishway or hatchery facilities in public interest.** (1) Any owner or occupant of a dam or artificial obstruction may file a protest with the Water Resources Commission within 10 days after receipt of notification from the director as provided in ORS 509.605 (2), or within 10 days after receiving notice of the requirement by the State Fish and Wildlife Commission under ORS 509.640, on the ground that providing the dam or artificial obstruction with a fishway or providing the dam with hatchery facilities as required by the State Fish and Wildlife Commission, as the case may be, would impair or be detrimental to the public interest.

(2) Within a reasonable time after the filing of the protest under subsection (1) of this section, the Water Resources Commission shall hold a public hearing thereon. The Water Resources Commission shall give written notice of the hearing to each owner or occupant of the dam or artificial obstruction, who is known to or can be reasonably ascertained by the Water Resources Commission, and to the State Fish and Wildlife Commission at least 10 days prior to the hearing.

(3) The Water Resources Commission, after the hearing, shall make a determination as to whether providing the dam or artificial obstruction with a fishway or providing the dam with hatchery facilities as required by the State Fish and Wildlife Commission, as the case may be, would impair or be detrimental to the public interest. The determination shall be binding upon each owner or occupant of the dam or artificial obstruction and the State Fish and Wildlife Commission. The determination shall approve the requirement of the fishway or the hatchery facilities, as the case may be, approve the requirement subject to conditions specified in the determination or disapprove the requirement. If each owner or occupant of the dam or artificial obstruction complies with the determination, such owner or occupant shall be deemed not in violation of ORS 509.605 or 509.640, as the case may be.

(4) In determining whether providing the dam or artificial obstruction with a fishway or providing the dam with hatchery facilities as required by the State Fish and Wildlife Commission, as the case may be, would impair or be detrimental to the public interest, the Water Resources Commission shall have due regard for:

- (a) The state water resources policy formulated under ORS 536.295 to 536.350.
- (b) The considerations set forth in ORS 536.310.

(5) In the event protests are filed with the Water Resources Commission under both subsection (1) of this section and ORS 498.351, the Water Resources Commission may consider and determine the protests in a combined proceeding under this section and ORS 498.351.

<1955 c.707 s51; 1973 c.723 s124>

**ORS 509.910 Injunction to prevent certain violations; jurisdiction; service on corporation.**

(1) The State Fish and Wildlife Commission may maintain an action for an injunction to enjoin and restrain any person, municipal corporation, political subdivision or governmental agency of this state from violating any of the provisions of ORS 509.130, 509.140, 509.505, 509.605, 509.610, 509.615 and 509.625.

(2) Any action authorized by this section shall be tried in the circuit court of the county in which the violation occurs.

(3) If the defendant is a corporation with its principal office and place of business in a county other than in which the waters flow or are situated, such action shall be deemed an action of local nature and service of summons made on a corporation in any county where the corporation has its principal office and place of business. If it is a foreign corporation, service may be made on the statutory agent but if there is no such statutory agent then upon the Secretary of State as in other cases provided by law.

<1963 c.303 s1; 1977 c.242 s8; 1979 c.284 s16>