

Date of Hearing: April 23, 2024

ASSEMBLY COMMITTEE ON WATER, PARKS, AND WILDLIFE

Diane Papan, Chair

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

SUBJECT: Department of Transportation: projects: fish passage

SUMMARY: Expands an existing prohibition on constructing impediments to fish passage so that it applies statewide instead of only to certain regions. Extends a requirement that the California Department of Transportation (Caltrans) report annually on its progress remediating fish passage barriers from 2025 to 2030 and requires Caltrans to complete a programmatic environmental review of these barriers by January 1, 2026. Specifically, **this bill**:

- 1) Expands a prohibition on the construction or maintenance of any device or contrivance in any stream that prevents, impedes, or tends to prevent or impede fish passage so that it applies statewide instead of only in certain Department of Fish and Wildlife (DFW) Districts.
- 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.
- 5) Expands Caltrans' requirement to assess a project's impact on stream crossings where anadromous fish are, or were historically, found to include stream crossings adjacent to, or with a nexus to, a stream 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.
- 6) Defines "barrier" for the purposes of this bill as any human-made culvert, stream crossing, grade control structure, or other highway-associated infrastructure that prevents or inhibits fish passage.
- 7) Makes technical and conforming changes.

EXISTING LAW:

- 1) Provides it is unlawful to construct or maintain a barrier to fish passage in any stream in the DFW Districts 1, 1 3/8, 1 1/2, 2, 2 1/4, 2 1/2, 3, 3 1/2, 4, 4 1/8, 4 1/2, 4 3/4, 11, 12, 13, 23, and 25 (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 [Streets and Highways Code (SHC) § 156.1].
- 3) Requires Caltrans to initiate the 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) Requires, for projects that affects a stream crossing, Caltrans to complete an assessment of potential barrier to fish passage prior to commencing project design, and submit the assessment to DFW (SHC § 156.3).
- 5) Requires Caltrans to remediate the barrier to fish passage in the project implementation, in consultation with DFW (SHC § 156.3).
- 6) Provides that new projects shall not present a barrier to fish passage (SHC § 156.3).
- 7) For projects identified by DFW as the most significant barriers to fish passage, requires DFW 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. This bill is keyed fiscal.

COMMENTS:

- 1) **Purpose of this bill.** 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. [This bill] 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.
- 2) **Background.** 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 DFW 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.

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.

- 3) **Arguments in support.** California Trout and a number of environmental and conservation organizations support this bill arguing that it strengthens "existing law on the removal and remediation of [Caltrans] fish passage barriers – including culverts, grade control structures, and other highway-associated infrastructure." California Trout notes that "safe fish passage promotes genetic diversity, mitigates aquatic habitat fragmentation, improves population variability, and enhances climate change adaptation by supporting access to refugia habitat during summer and prolonged drought conditions. Protecting freshwater corridors is, therefore, not only an investment in ecosystem health but also a proactive strategy to mitigate the impacts of habitat fragmentation and climate change on California's biodiversity." Finally, supporters assert this bill will help the state achieve its 30x30 goals.
- 4) **Double referral.** This bill was also referred to the Assembly Transportation Committee where it passed 12-0 on April 2, 2024.
- 5) **Related legislation.** 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
Endangered Habitats League
Enviromental Defense Center
Friends of The Los Angeles River
Friends of The River
Friends of The Santa Clara River
In Defense of Animals
North County Watch
Planning and Conservation League
Santa Clarita Organization for Planning and The Environment
Save Open Space & Agricultural Resources
Sierra Club California
Sierra Institute
Sonoma Land Trust
Southwest Council, Fly Fishers International
Stewards of The Arroyo Seco
Stoecker Ecological
The Nature Conservancy
Trout Unlimited

Opposition

None on file

Analysis Prepared by: Pablo Garza / W., P., & W. / (916) 319-2096