

Memorandum

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To: DEPUTY DISTRICT DIRECTORS
Program/Project Management,
Environmental, and Planning
DISTRICT BRANCH CHIEFS, Environmental
DISTRICT SENIORS, Environmental

Date: July 7, 2006

From: JAY NORVELL
Chief
Division of Environmental Analysis

Subject: Senate Bill 857(SB 857); Fish Passages



Senate Bill B857 was enacted into law effective January 1, 2006. This bill amends Article 3.5 of the Streets and Highways Code, detailing requirements for assessing and remediating barriers to fish passage at stream crossings along the State Highway System. The California Department of Transportation (Department) is required to complete an assessment of potential barriers to anadromous fish (migratory fish that breed in fresh water and spend a portion of their lives in the ocean) prior to commencing any project using State or federal transportation funds. The assessment must be submitted to the California Department of Fish and Game (DFG) who will add the information to the CALFISH database. Additionally, the Department is required to: 1) construct projects without presenting barriers to fish passage; 2) pursue development of a programmatic environmental review process for remediating existing barriers; and, 3) prepare an annual report to the Legislature detailing its progress in locating, assessing, and remediating existing barriers to anadromous fish passage. This bill also amends Fish and Game Code Section 5901 to clarify that it is unlawful to construct or maintain any "device or contrivance" that prevents or impedes up or downstream passage of anadromous fish in all the DFG districts.

The legislature intends these changes to provide substantial benefit to the State's salmon and steelhead trout populations by preventing and removing barriers to fish passage where highways cross anadromous fish bearing streams, especially at the thousands of culverts and bridges on coastal streams. They also anticipate overall savings to the State as a result of streamlined project delivery that would be realized through improved project scopes, schedules, and acceptable design alternatives as well as faster permitting.

Effective immediately, each District with anadromous fish streams (whether current or historically populated) shall do the following actions to implement this new responsibility:

1. All projects shall be constructed so that they do not present a barrier to anadromous fish passage at any life stage. For the purposes of this directive, the definition of "projects" includes any action whether State or federally funded and includes major and minor projects, rehabilitation and new construction, and maintenance actions requiring State or Federal environmental permits. A "barrier" can be physical, thermal, or hydrologic and is defined as

a partial or complete barrier to any life stage as defined by National Marine Fisheries Service (NOAA) and the DFG assessment protocol.

2. All projects on streams that currently or historically supported anadromous fish and affect culverts, bridges, or associated structures shall include a fish passage assessment according to NOAA and DFG guidelines prior to commencing project design. This must occur prior to PA&ED. Please note that part or all of this information is often needed in the "K" phase to anticipate cost, scope, and schedule aspects associated with design or remediation measures.
3. The Department is required to develop necessary passage corrections during project development in consultation with the DFG. Remediation for existing barriers shall be designed into projects, regardless of the project's purpose.
4. All fish passage assessment findings and associated data regardless of results shall be submitted to the DFG. Findings and notations of any remediation must also be submitted to the CALFISH database, although this information may be submitted through the DFG during consultation.
5. Each District shall track expenditures and progress in locating, assessing, and remediating barriers to fish passage as well as programmatic agreements that directly or indirectly facilitate fish passage assessment or remediation. Tracking information and a summary for the fiscal year shall be submitted to the Division of Environmental Analysis (DEA) by June 1 of each year beginning in 2007 and ending in 2020. For 2006, information has already been requested. This information will be compiled into a single annual report due to legislative affairs in August, Business Transportation and Housing in September, and the legislature in October.
6. Each District Environmental Division Chief is responsible to develop a tailored plan for meeting the requirements of SB 857. A copy of this plan shall be submitted to DEA by August 30, 2006 for incorporation into the second annual report. Any updates should be submitted concurrent with annual reporting requirements. For your reference a copy of the chaptered legislation is attached (Attachment 1), as well as general guidance and materials (Attachment 2) for your use.

As we continue to address this important issue, we will continue to work with affected Districts and our resource agency partners to develop streamlined methods to complete the assessments, refine remediation priorities, and reduce the overhead of reporting and data management. Additional information and guidance may be found on the Division's Fish Passage Assessment web page located at http://pd.dot.ca.gov/env/bio/bio_pages/Fish_Passage_index.htm

If you have any questions, please contact Gregg Erickson Chief, Office of Biological Studies and Technical Assistance at (916) 654-6296 or Deborah McKee, Senior Fisheries Biologist at (916) 653-8566.

Attachments

Attachment 1
SB 857 - Fish Passages

Senate Bill No. 857

CHAPTER 589

An act to amend Section 5901 of the Fish and Game Code, and to add Article 3.5 (commencing with Section 156) to Chapter 1 of Division 1 of, the Streets and Highways Code, relating to fish passages.

[Approved by Governor October 6, 2005. Filed with
Secretary of State October 6, 2005.]

LEGISLATIVE COUNSEL'S DIGEST

SB 857, Kuehl. Fish passages.

Existing law provides that the Department of Transportation has full possession and control of all state highways.

This bill would require the department to prepare an annual report to the Legislature describing the status of the department's progress in locating, assessing, and remediating barriers to fish passage, as defined. The bill would require the department also to complete assessments of potential barriers to anadromous fish prior to commencing any project using state or federal transportation funds. The bill would require the department to submit these assessments to the Department of Fish and Game to be added to the CALFISH database. The bill would also require projects to be constructed without presenting barriers to fish passage.

Existing law prohibits the construction or maintenance, in certain fish and game districts, of any device or contrivance that prevents, impedes, or tends to prevent or impede, the passing of fish up and down stream.

This bill would revise the fish and game districts in which this prohibition applies.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) The decline of naturally spawning salmon and steelhead trout is primarily a result of the loss of appropriate stream habitat and the inability of fish to get access to habitat, according to recent reports to the Fish and Game Commission and by the Department of Fish and Game.

(b) Increasing the naturally spawning salmon and steelhead trout populations in California would provide a valuable public resource, employment opportunities, and substantial economic benefits to the state.

(c) Federal, state and local governments and nonprofit organizations are spending hundreds of millions of public dollars in California protecting and restoring habitat for salmon and steelhead trout through watershed and fishery restoration programs, with the state alone spending over two

hundred million dollars (\$200,000,000) for these purposes in the past five years.

(d) The California Department of Transportation has maintenance, construction, and oversight responsibility for the state's roads, including approximately 5,000 stream crossings on coastal streams.

(e) Stream crossings on roads frequently present barriers to the migration of fish, and there is an extensive lack of information regarding the number and extent of existing barriers to fish migration at state road stream crossings.

(f) Having this information would enable the department to better predict the time and funding required to complete transportation projects.

(g) Substantial savings to the state would result from improved ability to deliver transportation projects within their budgets and on time, and substantial benefit to the state's salmon and steelhead trout populations would result from remediation of barriers to fish passage at stream crossings.

SEC. 2. Section 5901 of the Fish and Game Code is amended to read:

5901. Except as otherwise provided in this code, it is unlawful to construct or maintain in any stream in Districts 1, 1 $\frac{3}{8}$, 1 $\frac{1}{2}$, 1 $\frac{7}{8}$, 2, 2 $\frac{1}{4}$, 2 $\frac{1}{2}$, 2 $\frac{3}{4}$, 3, 3 $\frac{1}{2}$, 4, 4 $\frac{1}{8}$, 4 $\frac{1}{2}$, 4 $\frac{3}{4}$, 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.

SEC. 3. Article 3.5 (commencing with Section 156) is added to Chapter 1 of Division 1 of the Streets and Highways Code, to read:

Article 3.5. Barriers to Fish Passage

156. For purposes of this article, the following definitions shall apply:

(a) "Fish passage" means the ability of an anadromous fish to access appropriate habitat at all points in its life cycle, including spawning and rearing.

(b) "Department" means the Department of Transportation.

156.1. The Director of Transportation shall prepare an annual report describing the status of the department's progress in locating, assessing, and remediating barriers to fish passage. This report shall be given to the Legislature by October 31 of each year through the year 2020.

156.2. The department shall 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. The department shall include a description of its progress on this review process in the report specified in Section 156.1.

156.3. For any project using state or federal transportation funds programmed after January 1, 2006, the department shall insure that, if the project affects a stream crossing on a stream where anadromous fish are, or historically were, found, an assessment of potential barriers to fish

passage is done prior to commencing project design. The department shall submit the assessment to the Department of Fish and Game and add it to the CALFISH database. If any structural barrier to passage exists, remediation of the problem shall be designed into the project by the implementing agency. New projects shall be constructed so that they do not present a barrier to fish passage. When barriers to fish passage are being addressed, plans and projects shall be developed in consultation with the Department of Fish and Game.

156.4. For any repair or construction project using state or federal transportation funds that affects a stream crossing on a stream where anadromous fish are, or historically were, found, the department shall perform an assessment of the site for potential barriers to fish passage and submit the assessment to the Department of Fish and Game.

Senate Bill 857; Fish Passages Assessment and Reporting Protocols Attachment 2

This attachment provides the specific criteria, standard analytical and reporting protocols, data requirements, and additional resources necessary for proper assessment and preliminary scoping of corrective measures to address fish passage at road stream crossings in compliance with Senate Bill 857. All districts, divisions, and programs will use these assessment and reporting protocols for addressing fish passage compliance at on-system road stream crossings.

All road-stream crossings (culverts, bridges, low-water crossings) on anadromous fish streams (whether currently or historically populated) shall conform to the following guidelines and criteria. These resources can be downloaded from the Division of Environmental Analysis intranet Passage Website [http://pd.dot.ca.gov/env/bio/bio_pages/Fish_Passage_index.htm]:

- 1) Culvert Criteria for Fish Passage (California Department of Fish and Game 2002).
- 2) Guidelines for Salmonid Passage at Stream Crossings (NOAA-Fisheries Southwest Region, September 2001).

Stream crossing fish passage evaluations and analytical procedures shall follow:

- 1) Part IX Fish Passage Evaluation at Stream Crossings from the California Salmonid Stream Habitat Restoration Manual (California Department of Fish and Game, 1998 3rd ed.). This document is available on the Fish Passage Website.
- 2) Field assessments shall use the standard Fish Passage Field Form documentation located on the Fish Passage Website.
- 3) Field measurement data and results of hydraulic analyses shall also be digitally recorded to a District Fish Passage Database using the standard electronic format provided on the Fish Passage Website.

Upon completion of a fish passage site assessment:

- 1) Districts shall maintain their own Fish Passage Database of district assessment results. On a quarterly basis, beginning September 1, 2006 (and continuing each January 1, March 1, and June 1), each district or program will transmit a digital copy of database records to the Division of Environmental Analysis, Fish Passage Program for inclusion to the Statewide Fish Passage Assessment Database. Each quarter, the Division of Environmental Analysis will then transmit database records acquired from districts and programs to the California Department of Fish and Game (DFG). The DFG will forward data to the CALFISH database.
- 2) Site assessment results shall be summarized in a Fish Passage Evaluation Site Summary Report using the standard electronic form provided on the Fish Passage Website. The district shall transmit the report to the DFG prior to PA&ED.
- 3) A Fish Passage Evaluation Site Summary Report shall be included as an appendix to the Natural Environment Study (NES) and/or other environmental documents and permits as necessary.

Additional resources are available on the Fish Passage Website website. These include but are not limited to:

- 1) Link to FishXing Software