

E – OUTLOOK

ENVIRONMENTAL HOT TOPICS AND LEGAL UPDATES

Year 2012

Environmental & Natural Resources Law Section

Issue 2

OREGON STATE BAR

Editor's Note: We have reproduced the entire article below. Any opinions expressed in this article are those of the author alone. For those who prefer to view this article in PDF format, a copy will be posted on the Section's website: <http://www.osbenviro.homestead.com/>.

E-Outlook Editor
Sarah Liljefelt
s.liljefelt@water-law.com

Oregon 2012 Legislative Round-Up

By Laura Maffei, Schwabe Williamson & Wyatt

The following bills were passed in the 2012 Regular Session of the Oregon State Legislature and have been signed by Governor Kitzhaber for enactment on the dates shown:

House Bill 4005 – Tax Credit for Livestock Depredation:

HB 4005 establishes an income tax credit for the current market value of a taxpayer's livestock killed by a wolf. A taxpayer must submit evidence, including a finding by the Department of Fish and Wildlife (ODFW) or by a peace officer, that a wolf was the probable cause of the loss. The tax credit will be reduced by any amount the taxpayer has already received as compensation for the killed livestock. If the tax credit exceeds taxes for that year, the amount of the excess is refunded to the taxpayer. The tax credit applies to tax years beginning on or after January 1, 2012.

Effective date: June 4, 2012

Sunset: January 1, 2019

House Bill 4006 – Consultation with Landowners & Local Government on New State Endangered Species Act Listings:

HB 4006 requires Oregon's Fish and Wildlife Commission to consult with affected cities, counties, private landowners and local service districts prior to making a determination that a species is threatened or endangered. The Commission must work with affected cities, counties, private landowners and local service districts to mitigate adverse impact on local economies

when it adds species to the endangered species list. HB 4006 amends ORS 496.176 and 496.182.
Effective date: March 16, 2012

House Bill 4050 – Ocean Troll Salmon Fishery Permit Elimination:

HB 4050 eliminates the system for issuing permits in the ocean troll salmon fishery and removes provisions limiting transfer to certain vessels. HB 4050 does not affect validity of permits issued or renewed prior to the effective date of the Act.

Effective date: March 5, 2012

House Bill 4079 – Energy Incentives Report to the Legislature:

HB 4079 makes technical clarifications to the energy tax credit programs and the biomass tax credit that were passed by the Oregon legislature in 2011 to replace the now-defunct Business Energy Tax Credit program. The following changes and clarifications were enacted by HB 4079:

- Clarification of provisions governing renewable energy tax credits, including the use of term “award,” and: (i) confirming that partial credit and partial appropriation are allowed, (ii) allowing the credit auction to occur no later than April 15 following the end of the tax year, and (iii) making credits non-revocable once they have been sold.
- Clarification of provisions governing the transportation credit, including: (i) how it is claimed over five years, (ii) the definition of a “transportation project,” and (iii) direction on how the Department of Energy is to manage the credit cap.
- For the Residential Energy Tax credit, allowing third-party installers to “reserve” tax credits, and codifying existing administrative rules.
- Limiting the biomass credit to one tax credit per unit of biomass and removing the program cap.
- Clarification of the expiration date of pre-certifications under the old Business Energy Tax Credit program.
- Conforms language pertaining to transferees within the manufacturing tax credit program.
- Clarification that, in applying for a preliminary or final certification, the information on the number and type of jobs created by the project pertains to direct jobs only.
- Clarification that in a credit transfer, the cash value of a potential credit is set at the time of application for preliminary certification.
- Biomass and energy tax credits are added to reporting requirements by state agencies.

Effective date: June 4, 2012

Senate Bill 1510 – Marine Reserves:

In 2009, the Oregon State Legislature passed House Bill 3013, establishing a process for evaluation and implementation of marine reserves within Oregon's Territorial Sea. Marine reserves are areas within Oregon's Territorial Sea or adjacent rocky intertidal areas that are protected from all extractive and development activities, except as necessary for monitoring or research, or to aid in the research and management of ocean habitats and marine plants and animals. SB 1510 directs state agencies to implement recommended reserve sites and report back

to the Legislative Assembly. Specifically, SB 1510 directs the Oregon Department of Fish and Wildlife (ODFW), the State Fish and Wildlife Commission, and the State Land Board to implement ODFW's January 25, 2011 recommendations on marine reserve boundaries and allowances by adopting rules to establish, study, monitor, evaluate and enforce the following: (i) one marine reserve and two marine protected areas at Cape Falcon; (ii) one marine reserve and three marine protected areas at Cascade Head; and (iii) one marine reserve, two marine protected areas and seabird protection area at Cape Perpetua. No rules prohibiting fishing in these areas are permitted until baseline data are collected. The Scientific and Technical Committee of the Ocean Policy Advisory Council must submit a draft report on the designated areas to interim legislative committees no later than October 1, 2022 and a final report no later than March 1, 2023. The reports must be researched and prepared using existing resources and without additional appropriation by a public university chosen by the committee.
Effective date: March 5, 2012

Senate Bill 1512 – Ban on Sale of Lighting Containing Mercury at Certain Levels:

SB 1512 prohibits the sale, offer for sale, or distribution of any lighting that contains mercury in amounts that exceed the standards provided in the bill, and establishes exemptions from the ban. Under SB 1512, violation of the mercury standards is an unlawful trade practice. On or after January 1, 2014, the Department of Environmental Quality (DEQ) must report to the Legislative Assembly if California adopts, in whole or part, the mercury content standards in the European Union's RoHS 2 directive, and recommend whether the amount of mercury allowed by SB 1512 should be changed. The Department of Administrative Services, after consulting with DEQ, must request lighting information from suppliers, issue specifications, and make procurement decisions that favor lighting that meets the standards in SB 1512.
Effective date: January 1, 2013

Senate Bill 1582 – Independent Review of Wetland Determinations:

SB 1582 authorizes a landowner to request the appointment of an independent panel to review wetland delineation determinations made by the Department of State Lands (DSL) after first applying for reconsideration of the determination. DSL, upon receipt of a request for independent review, must enter into an agreement with the requestor that allows the panel of independent reviewers to modify the determination. DSL is not required to enter the agreement if the requestor does not agree to make the independent panel's decision final and binding. SB 1582 also amends existing law related to submission of wetland delineation reports as follows:

- DSL must give priority to reviewing a wetland delineation report that is submitted with or in advance of a permit application if the permit would authorize activities on land subject to the report.
- Wetland delineation determinations by DSL must be made by persons with expertise in wetlands hydrology, soil and vegetation.
- Wetland delineation determinations by DSL expire up to 10 years after the date on which the determination is made.
- Delineations must comport with the United States Army Corps of Engineers Wetland Delineation Manual of 1987 and any subsequent federal supplements.
- Amendments apply to delineations submitted to DSL after the effective date of the Act.

Effective date: January 1, 2013
Sunset date: January 2, 2022

E-Outlook June, 2012

If you would like to contribute or have comments, please contact the E-Outlook Editor, Sarah Liljefelt, at s.liljefelt@water-law.com or (503) 281-4100.