



State of Washington
DEPARTMENT OF FISH AND WILDLIFE

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November 1, 2020

The Honorable Christine Rolfes
Chair, Senate Ways and Means
303 John A. Cherberg Building
Post Office Box 40466
Olympia, WA 98504-0466

The Honorable Timm Ormsby
Chair, House Appropriations
315 John L. O'Brien Building
Post Office Box 40600
Olympia, WA 98504-0600

The Honorable Steve Hobbs
Chair, Senate Transportation
305 John A. Cherberg Building
Post Office Box 40444
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The Honorable Jake Fey
Chair, House Transportation
415 John L. O'Brien Building
Post Office Box 40600
Olympia, WA 98504-0600

The Honorable Steve Tharinger
Chair, House Capital Budget
314 John L. O'Brien Building
Post Office Box 40600
Olympia, WA 98504-0600

Dear Chairpersons, Rolfes, Hobbs, Ormsby, Fey, and Tharinger:

I am writing to provide you with the Washington Department of Fish and Wildlife (WDFW), the Washington Department of Transportation (WSDOT), and the Brian Abbott Fish Barrier Removal Board's (FBRB) first update to the legislature regarding the development of a statewide culvert remediation plan for all culvert correction programs. Per provisos in the 2020 supplemental Capital and Transportation budgets, WDFW, WSDOT, and the FBRB are required to submit updates to the legislature on the development of the statewide culvert remediation plan. Updates are required by November 1, 2020 and March 1, 2021, with the final statewide culvert remediation plan to be submitted by January 15, 2021.

WDFW, WSDOT, and the FBRB have begun work on the provisos, but the underlying technical work to compare data about the proviso criteria (ESA listings, orca, and constraining fisheries) at statewide and watershed scales has been affected by this year's constraints on budget, hiring, and existing staff capacity. WDFW, WSDOT, and FBRB members have begun discussing a revised timeline to complete the work described in the provisos and will schedule opportunities to discuss the revised timeline with the Office of Financial Management, fiscal committees, and interested legislators during November and December of 2020.

Coordination with state agency barrier correction programs and consultation with tribes have begun, but significant work remains. The agencies responsible for barrier correction programs within the state are all members of the FBRB except for State Parks and are actively involved in the creation of the new FBRB strategy. On November 3rd, 2020 WDFW will brief all tribes attending the 7th annual Washington State and Western Washington treaty tribes fish passage barrier repair progress and coordination meeting on progress made on the new board strategy. WDFW will schedule meetings with State Parks and state agency staff who manage the other state programs, as well as separate meetings to consult with tribal governments to ensure their involvement and insight into both the strategy and budget and policy recommendations.

WDFW, WSDOT and the FBRB will provide the next update on the development of the new strategy to the office of financial management and the legislative fiscal committees by March 1, 2021.

The attached report provides an executive summary of the plan update, defines the problem statement, describes the background of the FBRB and culvert remediation to date, summarizes the provisos, outlines the project timeline and plan, shares progress to date, explores emerging policy questions and considerations, and describes future updates. An appendix to the report includes the provisos outlining the requirements for this work.

If you have any questions or concerns regarding this report update to the legislature, please feel free to contact Tom McBride, WDFW's Legislative Director, at (360)480-1472.

Sincerely,



Thomas P. Jameson, LTC, USA (RET)
Chair, Brian Abbott Fish Barrier Removal Board

Progress Report on the Development of a Statewide Fish Passage Barrier Removal Strategy

The Brian Abbott Fish Barrier Removal Board & The Washington State Department of Transportation



Washington
Department of
**FISH and
WILDLIFE**



**BRIAN ABBOTT
FISH BARRIER
REMOVAL BOARD**

November 1, 2020

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Executive Summary

The Washington Department of Fish and Wildlife (WDFW), the Washington State Department of Transportation (WSDOT), and the Brian Abbott Fish Barrier Removal Board (FBRB) were tasked in 2020 Supplemental Capital Budget and Transportation Budget provisos to develop a comprehensive statewide strategy, focusing the efforts of all culvert correction programs into a single strategic approach to maximize the salmon and orca recovery benefits from the public investment. The comprehensive strategy is to guide the funding recommendations of the FBRB, as well as other state fish passage barrier correction programs. Work has begun on the provisos, but the underlying technical work to compare data about the proviso criteria (ESA listings, orca, and constraining fisheries) at statewide and watershed scales has been affected by this year's constraints on budget, hiring, and existing staff capacity. WDFW, WSDOT and FBRB members have begun discussing a revised timeline to complete the work described in the provisos and will schedule opportunities to discuss these recommendations with OFM, fiscal committees, and interested legislators during November and December of 2020.

Coordination with state agency barrier correction programs and consultation with tribes have begun but much work remains to be done. The agencies responsible for barrier correction programs within the state are all members of the FBRB except for State Parks and are actively involved in the creation of the new FBRB strategy. On November 3rd, 2020 WDFW will brief all tribes attending the 7th annual Washington State and Western Washington treaty tribes fish passage barrier repair progress and coordination meeting on progress made on the new board strategy. WDFW will schedule meetings with State Parks and state agency staff who manage the other state programs, as well as separate meetings to consult with tribal governments to ensure their involvement and insight into both the comprehensive strategy and budget and policy recommendations.

WDFW, WSDOT and the FBRB will provide the next update on the development of the new comprehensive strategy to the Office of Financial Management and the legislative fiscal committees by March 1, 2021.

Problem Statement

The state has several distinct fish passage barrier remediation plans and programs operating simultaneously. Although fish passage barrier correction is necessary for recovery of salmon and steelhead, an additional driving factor for fish passage barrier removal investments is the federal court injunction, issued March 2013, which requires the state to significantly increase the effort for removing state-owned culverts that block habitat for salmon and steelhead by 2030. However, a sole focus on the injunction culverts will not deliver the desired outcomes for salmon, steelhead, orca recovery, and important fisheries statewide. The FBRB has been tasked to develop a comprehensive statewide strategy, focusing the efforts of all culvert correction programs into a single strategic approach to maximize the salmon and orca recovery benefits from the public



investment. To maximize salmon and orca recovery benefit from the state investment—and build support for the level of funding needed—it is critical that these disparate strategies be merged into one comprehensive plan. A comprehensive plan will ensure that the state culvert injunction target is met by the court-imposed deadline, while also meeting identified natural resource objectives that necessitate correcting non-state-owned barriers.

Background

Established by the legislature in 2014, the purpose of the FBRB is to aid in the restoration of healthy and harvestable levels of salmon and steelhead statewide through the coordinated and strategic removal of barriers to fish passage (RCW 77.95.160). Board membership includes the WDFW (chair), the Recreation and Conservation Office in concert with the Governor’s Salmon Recovery Office (RCO & GSRO), Association of Washington Cities (AWC), Washington Association of Counties (WSAC), the WSDOT, the Department of Natural Resources (DNR), the Confederated Tribes of the Colville Reservation, the Yakama Nation, the Salmon Recovery Council of Regions Executive and the National Oceanic and Atmospheric Administration (NOAA).

Based on direction from the legislature in RCW 77.95.160, the FBRB developed and implemented a method for state capital grants that rewards projects that remove barriers upstream or downstream of another barrier correction and projects that sequentially remove barriers in watersheds that are recognized as critical by the state’s Salmon Recovery Regions. This approach leverages the large gains made by the investments of WSDOT, the forest industry, and local governments, and also ensures fish passage removals closely align and coordinate with the salmon recovery priorities of regional and local salmon recovery organizations. The FBRB received \$19.7M in capital project funding in the 17-19 and \$27.7M in 19-21 for the design and/or removal of 69 fish passage barriers. The FBRB’s 21-23 project funding request currently stands at \$65.6M to fund the removal of 118 additional barriers of all forms of ownership: state, tribal, city, county and private. If funded these projects will restore salmonid access to more than 422 miles of spawning and rearing habitat.

The approach described above reflects the values described by the legislature, as well as the scientific information and data at the time the FBRB was established. There is also opportunity to build on this success, incorporate the latest developments in fish passage science and professional experience, and better integrate multiple public investments in barrier removal, as described in the problem statement above.

Proviso Summaries

On March 11th, 2020, lawmakers provided direction to WDFW, WSDOT and the FBRB through provisos in the supplemental Operating Budget (ESSB 6168), Capital Budget (ESSB 6248), and the Transportation Budget (ESHB 2322). The provisos direct the FBRB to develop a comprehensive plan for fish passage barrier removal in Washington State that builds on investment in the United States v. Washington permanent injunction to deliver benefits to salmon and steelhead stocks that are listed as threatened or endangered under the Endangered Species Act (ESA), contribute to the



protection and restoration of Southern Resident Orca, and limit the harvest of anadromous fish in the Pacific Salmon Treaty or North of Cape Falcon fishery negotiations. The complete text of the Operating Budget proviso, Capital Budget proviso, and the Transportation budget proviso are included in Appendix A to this report.

Proviso Project Timeline and Plan

In response to these budget proviso directives, WDFW, WSDOT and the FBRB commenced work to develop the comprehensive statewide culvert remediation plan and satisfy the thirteen specified tasks encompassed in the two provisos. This report, co-authored by WDFW, WSDOT and the FBRB is the first required update on the development of the new strategy, and includes a project timeline and plan to ensure that all agencies with culvert correction programs are involved in the creation of the comprehensive plan.

Regrettably, the coronavirus pandemic has had negative effects on strategy development. The proviso funding allotted for labor to support development of the new strategy was included in FY21 state budget savings. Additionally, the state hiring freeze further prevented WDFW from adding the staff resources necessary to complete all proviso tasks. Mandated furloughs and a move to a telework operating environment have resulted in diminished staff time and an initial decrease in collaboration. Those factors have limited the availability of existing staff to contribute to proviso tasks.

Revising the Timeline

WDFW, WSDOT and FBRB members have begun discussing a revised timeline to complete the work described in the provisos. Although the provisos note the need for an update on progress in March of 2021, the *final* comprehensive strategy and the process by which it will be managed over time, as well as recommended policy and budget changes are due to the governor and the legislative fiscal committees by January 15, 2021. However, completing the comprehensive plan and thoughtful recommendations regarding associated policy and budget changes depends on completion of the underlying technical work to compare data about the proviso criteria (ESA listings, orca, and constraining fisheries) at statewide and watershed scales; this work has been affected by constraints on budget, hiring, and existing staff capacity in 2020. The WDFW, WSDOT and the FBRB will schedule opportunities to discuss adjusted deadlines with OFM, fiscal committees, and interested legislators during November and December of 2020. We are grateful for understanding of the real effects of this year on the proviso work, as well as consideration of reasonable changes to the timeline to deliver quality recommendations that can guide the state's strategy into the future, as expected in the provisos.



Proviso Task List and Current Timeline

Task	Timeline
Identify streams with listed salmon species, that provide prey for Southern Resident Killer Whale (SRKW), that are impacting commercial, tribal and recreational harvest	Complete for Chinook, ongoing but delayed for other species and harvest
Identify barriers on those identified streams	Complete for Chinook, ongoing but delayed for other species and harvest
Develop a comprehensive statewide culvert remediation plan that: works in conjunction with the state approach, fully satisfies the requirements of the injunction, makes both local and state funding recommendations, and allows for efficient bundling of projects	January 15, 2021 WDFW, WSDOT and FBRB will propose revised deadlines
<ul style="list-style-type: none"> Recommend statutory or policy changes and budget needs for the board or state capital budget programs 	
<ul style="list-style-type: none"> Make recommendations on methods and procedures for state agencies and local governments to complete and maintain accurate barrier inventories 	
<ul style="list-style-type: none"> Develop a plan to seek and maximize the chances of success of significant federal investment in the comprehensive statewide culvert remediation plan 	
<ul style="list-style-type: none"> Submit the plan and the process by which it will be adaptively managed over time to the governor and the legislative fiscal committees by January 15, 2021 	
Consult with tribes	Ongoing
Coordinate with WSDOT fish barrier work plans	Ongoing
Provide updates on the plan to the office of financial management and the legislative fiscal committees by November 1, 2020, and March 1, 2021	November 1, 2020 March 1, 2021
Present the status of the plan to the annual Washington state and Western Washington treaty tribes fish passage barrier repair progress and coordination meeting	November 3, 2020

Progress to Date

Stream and Barrier Identification

WDFW biologists have begun to use geographic information systems (GIS) data to identify the streams at the statewide scale that meet the four criteria listed in the provisos, as well as barriers



within a watershed that meet these criteria. When complete, this information can be used to prioritize barrier corrections to maximize the benefits to critical species and to coordinate barrier removal efforts between project proponents and programs. This geographic information will also become the basis for the comprehensive strategy itself, including recommended priorities and supporting state policy and budget changes.

This underlying technical work is complete for streams and barriers that are important for Chinook salmon. Per Southern Resident Killer Whale (SRKW) Task Force recommendations adopted in the 19-21 Operating Budget, WDFW staff have completed a statewide Chinook salmon barrier inventory. Chinook salmon are the main prey species for SRKW, and so this effort also completes the proviso direction to maximize benefit to southern resident orca whales. The Chinook barrier inventory entailed the work of two WDFW biologists full time for nine months and resulted in the identification of over 1,900 barriers to Chinook. Four hundred of those barriers have not received a site visit by WDFW staff to determine the severity of each barrier. WDFW is not able to devote the same time and effort to identify barriers to Chum, Coho, and steelhead, therefore the identification of streams and barriers for the remaining proviso work will rely on existing data and field knowledge to identify barriers that affect the three other species that meet the proviso criteria.

Consultation with Tribes

Indian tribes of Washington retain strong spiritual and cultural ties to salmon based on thousands of years of use for tribal religious/cultural ceremonies, subsistence, and commerce. Tribal governments have led the way to confront the habitat loss that threatens salmon, cultures, economies and the ways of life of all Washingtonians, and we welcome that expertise on the FBRB. The Yakama Nation and the Confederated Tribes of the Colville Reservation are voting FBRB members. Several additional tribes attend FBRB meetings and review associated materials.

The FBRB will continue to coordinate the development of the comprehensive strategy articulated by the provisos and all projects with interested tribes. On November 3rd, 2020 WDFW will brief all tribes attending the 7th annual Washington State and Western Washington treaty tribes fish passage barrier repair progress and coordination meeting on progress made on the new board strategy. WDFW will also schedule meetings to consult with tribal governments regarding preliminary results and recommendations during the remainder of the development of the proviso's comprehensive strategy.

Coordination with WSDOT Fish Barrier Work Plans

WSDOT is a charter and proactive member of the Board and works closely with WDFW and tribal co-managers on culvert case injunction compliance. WSDOT uses the following factors to prioritize barrier corrections and is committed to keeping the board, tribes, and others aware of its project delivery plan: habitat access; opportunity to bundle projects geographically; presence of up/downstream barriers; leverage investments by others; tribal priorities; project readiness; other transportation projects in area; transportation impacts. WSDOT collaborates with others to produce better results for salmon, including funding state culvert corrections associated with larger habitat restoration efforts. Once the underlying technical work to compare data about the proviso criteria (ESA listings, orca, and constraining fisheries) at statewide and watershed scales is complete, WDFW, WSDOT and the FBRB will work closely to ensure the comprehensive strategy



corrects barriers on the streams identified as critical to salmon recovery while supporting compliance with the culvert case injunction.

Assurance of Participation by All Agencies with Culvert Correction Programs

Our current list of state-funded programs involving fish passage barrier repair: funding dedicated to culvert injunction compliance, the Salmon Recovery Funding Board (SRFB), the Puget Sound Acquisition and Restoration (PSAR) fund, the Family Forest Fish Passage Program (FFFPP), the Fish Barrier Removal Board (FBRB), and the Chehalis Basin Aquatic Species Restoration Plan (ASRP). The agencies responsible for these barrier correction programs (WDFW, WSDOT, DNR, RCO, and State Parks) are all members of the FBRB and are therefore already involved in the creation of the comprehensive strategy, except for State Parks, and the Puget Sound Partnership (PSP). WDFW, WSDOT, and the FBRB will create opportunities before final submission to share and discuss the preliminary results and recommendations with State Parks and state agency staff who manage the other state programs to ensure their involvement and insight into both the comprehensive strategy and budget and policy recommendations. We are currently planning to schedule such conversations after the completion of the underlying technical work to compare data about the proviso criteria (ESA listings, orca, and constraining fisheries) at statewide and watershed scales to enable discussion of specific priorities and any changes necessary to deliver on these priorities through state programs.

Emerging Policy Questions and Considerations

Although the underlying technical work to consider the proviso criteria at state and watershed scales is ongoing, the conversations so far among WDFW, WSDOT, and other FBRB members have highlighted a number of considerations that will affect the comprehensive strategy and the plan for implementing and adaptively managing the strategy over time. It will be important to continue to wrestle with these considerations, including with the other state agencies who manage fish barrier removal programs, and in consultation with tribes.

- What are the costs associated with implementing and managing the comprehensive strategy? While many have discussed the cumulative construction costs of removing Washington's fish passage barriers, there will be costs associated with maintaining the inventories identified in the proviso, as well as costs to provide the outreach and technical assistance necessary to proactively direct barrier owners and project proponents to remove the highest priority barriers.
- The FBRB and other state programs have made valuable public investments in barrier removal. Once the comprehensive strategy is developed, how do we see existing in-progress projects (e.g., those that have completed some level of design) to completion to realize the existing public investment, while shifting support for additional/new projects to tighter alignment with the comprehensive strategy.



- Most state barrier removal programs develop project lists on a biennial basis and have already completed this process in anticipation of the 21-23 biennium. How do we synchronize completion of the comprehensive strategy with the biennial processes for soliciting and evaluating projects?
- How do we enable project funding processes to consider both consistency with the comprehensive strategy *and* opportunity created by willing landowners and partners and/or other public policy needs, such as the timing to replace critical infrastructure to protect public health and safety and/or realize efficiencies created by bundling multiple projects together?

Future Updates

Currently, the provisos direct WDFW, WSDOT, and the FBRB to provide OFM & fiscal committees the preliminary comprehensive strategy and associated policy recommendations and budget needs for the FBRB or state capital budget programs by January 15, 2021. As noted above in the “Proviso Project Timeline and Plan” section, the parties have begun to discuss a revised timeline. The WDFW, WSDOT and the FBRB will schedule opportunities to discuss a revised timeline with OFM, fiscal committees, and interested legislators during November and December of 2020.

WDFW, WSDOT and the FBRB will provide the next update on the development of the new comprehensive strategy to OFM and the legislative fiscal committees by March 1, 2021.



Appendix A

2020 Supplemental Operating Budget (ESSB 6168) Proviso

Section 307. (Page 342, Line 12)

(34) \$142,000 of the general fund—state appropriation for fiscal year 2021 is provided solely for work addressing fish passage barriers, including data analysis and mapping to identify streams and barriers that have the greatest potential benefit to listed salmon populations, southern resident orca whales, and fisheries. In conducting this work, the department must consult with tribes and coordinate with the department of transportation's fish barrier work plans.

2020 Supplemental Capital Budget (ESSB 6248) Proviso

In the 2020 supplemental Capital Budget (ESSB 6248) lawmakers provided additional guidance on fish passage barrier correction to not only WDFW but also to the Washington State Department of Transportation (WSDOT) and to the Brian Abbott Fish Barrier Removal Board (FBRB) that states:

Section 3062. (Page 93, Line 3)

(1) Nothing in this section alters the obligation set forth in the permanent injunction, including the compliance deadline, entered on March 29, 2013, in *United States v. Washington*, sub-proceeding 01-1 (Culverts), or the guidelines for compliance within the specified timeline with the permanent injunction as developed by the state agencies during the implementation process.

(2) Nothing in this section creates an obligation on the part of the state to provide funding for corrections for nonstate-owned culverts. Nothing in this section precludes the state from providing funding for corrections for nonstate-owned culverts.

(3) In order to provide recommendations, the Brian Abbott fish barrier removal board must develop a comprehensive statewide culvert remediation plan that works in conjunction with the state approach and that fully satisfies the requirements of the *United States v. Washington* permanent injunction and makes both local and state funding recommendations for additional nonstate barrier corrections across state culvert correction programs that maximize the fisheries habitat gain and other benefits to prey available for southern resident killer whale and salmon recovery.

(4) The comprehensive statewide culvert remediation plan must be consistent with the principles and requirements of the *United States v. Washington* permanent injunction and RCW 77.95.180 and must achieve coordinated investment strategy goals of permanent injunction compliance and the following additional resource benefits. The Brian Abbott fish barrier removal board chair, representing the board and the appropriate department of fish and wildlife executive management, shall consult with tribes to develop a watershed approach. Provided it is consistent with the *United States v. Washington* permanent injunction, prioritization of barrier corrections must be developed on a watershed basis and must maximize the following resource priorities:

- (a) Stocks that are listed as threatened or endangered under the federal endangered species act;
- (b) Stocks that contribute to protection and recovery of southern resident orca whales;



(c) Critical stocks of anadromous fish that limit or prevent harvest of anadromous fish, as identified in the Pacific salmon treaty; and

(d) Weak stocks of anadromous fish that limit or prevent harvest of anadromous fish, as determined in North of Cape Falcon process.

(5) The comprehensive statewide culvert remediation plan must include recommendations on methods and procedures for state agencies and local governments to complete and maintain accurate barrier inventories. This plan must also allow for efficient bundling of projects to minimize disruption to the public due to construction as well as adjustments in response to obstacles and opportunities encountered during delivery.

(6) The Brian Abbott fish barrier removal board must also:

(a) Provide to the office of financial management and the fiscal committees of the legislature its recommendation as to statutory or policy changes, or budget needs for the board or state capital budget programs, for better implementation and coordination among the state's culvert correction programs by January 15, 2021; and

(b) Develop a plan to seek and maximize the chances of success of significant federal investment in the comprehensive statewide culvert remediation plan.

(7) It is the intent of the legislature that, in developing future budgets, state agencies administering state culvert correction programs will recommend, to the maximum extent possible, funding in their culvert correction programs for correction of barriers that are part of the comprehensive statewide culvert remediation plan developed by the Brian Abbott fish barrier removal board under this section.

(8) By November 1, 2020, and March 1, 2021, the Brian Abbott fish barrier removal board and the department of transportation must provide updates on the development of the statewide culvert remediation plan to the office of financial management and the legislative fiscal committees. The first update must include a project timeline and plan to ensure that all agencies with culvert correction programs are involved in the creation of the comprehensive plan.

(9) Prior to presenting the comprehensive statewide culvert remediation plan, the Brian Abbott fish barrier removal board must present the status of the plan to the annual Washington state and Western Washington treaty tribes fish passage barrier repair progress and coordination meeting. The board must submit the comprehensive statewide culvert remediation plan and the process by which it will be adaptively managed over time to the governor and the legislative fiscal committees by January 15, 2021.

2020 Supplemental Transportation Budget (ESHB 2322) Proviso

Section 305. Page 83, Line 10

(25)(a) The Washington state department of transportation is directed to pursue compliance with the U.S. v. Washington permanent injunction by delivering culvert corrections within the injunction area guided by the principle of providing the greatest fisheries habitat gain at the earliest time and considering the following factors: Opportunity to bundle projects, tribal priorities, ability to



leverage investments by others, presence of other barriers, project readiness, culvert condition, other transportation projects in the area, and transportation impacts.

(b) The department and Brian Abbott fish barrier removal board, while providing the opportunity for stakeholders, tribes, and government agencies to give input on a statewide culvert remediation plan, must provide updates on the development of the statewide culvert remediation plan to the capital budget, ways and means, and transportation committees of the legislature by November 1, 2020, and March 15, 2021. The first update must include a project timeline and plan to ensure that all state agencies with culvert correction programs are involved in the creation of the comprehensive plan.

