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This is a request for Office of Management and Budget (OMB) emergency clearance for a new information collection request (ICR) to enable the Department of Transportation (DOT) to implement the National Culvert Removal, Replacement, and Restoration Grant Program (Culvert AOP Program). The Culvert AOP Program was authorized in the Bipartisan Infrastructure Law (BIL), enacted as the Infrastructure Investment and Jobs Act (Act) (Pub. L. 117-58) on November 15, 2021. This historic Act is a once-in-a-generation opportunity to support transformational investments in our Nation's transportation infrastructure that will create good jobs, modernize our infrastructure, improve safety, tackle the climate crisis, and invest in communities that have too often been left behind. The Act includes the Culvert AOP Program to replace, remove, and repair culverts and weirs that would meaningfully improve or restore fish passage for anadromous fish. The National Culvert Grant Program responds, in part, to *Washington v. United States*, 584 U.S. \_\_\_ (2018), where the United States Supreme Court affirmed a U.S. Ninth Circuit Court of Appeals decision, 853 F.3d 946 (2016), ruling that the State of Washington must correct culverts to allow anadromous salmon to swim upstream as to uphold certain Native American treaty rights to fish.

### **Critical Nature of the Information Collection Request**

The Culvert AOP Program is critical to enabling States, units of local government, and Indian Tribes to meaningfully improve or restore fish passage of anadromous fish through the replacement, removal, and repair of culverts and weirs.

The statutory requirements of the Culvert AOP Program are found under section 21203 of the BIL and codified at [49 U.S.C. § 6703](#). In BIL, Congress authorized \$800 million for Fiscal Years (FY) 2022 through 2026 to provide financial assistance to Culvert AOP Program eligible projects. For FY 2022, a total of \$196 million is available for awards. The Culvert AOP Program prioritizes projects that would improve fish passage for: (A) anadromous fish stocks listed as an endangered species or a threatened species under section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533); (B) anadromous fish stocks identified by the National Marine Fisheries Service (NMFS) or the U.S. Fish and Wildlife Service (USFWS) that could reasonably become listed as an endangered species or a threatened species under that section; (C) anadromous fish stocks identified by the NMFS or the USFWS as prey for endangered species, threatened species, or protected species, including Southern resident orcas (*Orcinus orca*); or (D) anadromous fish stocks identified by the NMFS or the USFWS as climate resilient stocks. 49 U.S.C. 6703(e)(1). The program also prioritizes projects that would open up more than 200 meters of upstream habitat for anadromous fish before the end of the natural habitat. 49 U.S.C. 6703(e)(2). DOT developed an application template designed to help streamline the application process and submission of the information requested in the NOFO.

### **Need for Emergency Approval**

The issuance of the FY 2022 Culvert AOP Program NOFO is a high priority for the Administration so work can begin as soon as possible to improve transportation infrastructure, improve and restore fish passage for anadromous fish, and help uphold Native American treaty rights to fish. The Administration set an FY 2022 NOFO issuance date for Summer 2022, and the DOT, in consultation with NMFS and USFWS, has worked diligently since the enactment of BIL to develop the NOFO to implement the Culvert AOP Program and an application template as quickly as possible. The DOT is now ready to issue the NOFO on **September 30<sup>th</sup>, 2022**.

The use of normal clearance procedures for ICR approval will prevent the Department from meeting the Administration's deadline. If the Department does not receive emergency approval for this ICR, implementation of the Culvert AOP Program will be delayed.

Due to the urgency of executing the newly enacted Act, the Department respectfully ask OMB for emergency approval of the ICR within 30 days of receipt of this letter.

If you have any questions regarding this request, please contact Joseph Krolak, Principal Hydraulic Engineer, [joseph.krolak@dot.gov](mailto:joseph.krolak@dot.gov).

Sincerely,

Hari Kalla  
Associate Administrator for Infrastructure  
Federal Highway Administration