# OAR 141-102 Rulemaking Public Comments and Agency Response

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Summary

The public comment period was open from February 2 to March 19, 2021 at 5:00 PM. The original close date of the comment period was March 4, but after receiving a formal request to extend the deadline, the comment period was extended through March 19. The Department received 484 comments in total, 412 of which were submitted via form letter. The responses to ESH designation review requests were coordinated with the Oregon Department of Fish & Wildlife (ODFW) and are included in a separate section below.

Topics most frequently discussed were agriculture & irrigation, conservation, placer mining, and ESH designation review requests. See agency responses to common issues raised:

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<td>Agriculture,</td>
<td>Designations</td>
<td>ESH should only apply to perennial streams, not ephemeral or intermittent streams.</td>
<td>ORS 196.810 provides a definition of “essential indigenous anadromous salmonid habitat.” The statute does not differentiate stream types.</td>
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<td>Irrigation</td>
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<td>The capacity of perennial waters to function as habitat for critical salmonid species throughout the year is tied to the larger stream network, including intermittent and ephemeral streams, as well as groundwater seeps and springs. For example, during summer months when stream flows are low and water temperatures are elevated, some fish species rely on localized pockets of cooler water for survival. Similarly, subsurface water can be crucial for supporting juvenile salmon rearing in the isolated pools of intermittent streams.</td>
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<td>Agriculture, Irrigation</td>
<td>Designations</td>
<td>ESH should not be designated on man-made water delivery systems beyond barriers to fish passage (such as canals, ditches and pipelines).</td>
<td>ORS 196.810 provides a definition of “essential indigenous anadromous salmonid habitat.” The Oregon Department of Fish and Wildlife (ODFW) are the stewards of the data that identify ESH habitat. If you notice a mapping error or are aware of a fish passage barrier not currently reflected by the ESH map, please submit a request to change an ESH designation and mapping to DSL. DSL will submit requests to ODFW for consideration. This process is described in OAR 141-102-0040. Barriers to fish passage are shown on the <a href="https://www.oregon.gov/ODFW/">Oregon Fish Habitat Distribution and Barrier Data Viewer</a>.</td>
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<tr>
<td>Agriculture, Irrigation</td>
<td>Designations</td>
<td>ESH change requests should only be submitted by the property owner or applicable district.</td>
<td>ORS 196.810(1)(b) directs the Department to identify ESH in consultation with ODFW and other affected parties. “Affected parties” is not defined in statute. DSL interprets that affected parties should include the variety of interests in designation of ESH.</td>
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<td>Agriculture, Irrigation</td>
<td>Permitting</td>
<td>The ESH map that existed when a five-year permit or authorization was granted should apply through the life of the authorization, even as ESH designations change annually.</td>
<td>For DSL, an ESH designation changes the volume threshold at which a removal-fill permit is required. Therefore, if a permit has been authorized and the ESH designation changes, there is no effect. ORS 196.913(c) prohibits participation in the agricultural maintenance program for ESH-designated habitat. DSL will coordinate with Oregon Department of Agriculture during the annual update process such that a notice holder may be alerted of a change in ESH designation.</td>
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<td>Agriculture, Irrigation</td>
<td>Outreach</td>
<td>DSL should notify landowners of proposed changes to ESH, and provide them the opportunity to comment on ESH designation changes on their property. Recreational or small-scale mining operations must be consulted as an affected party per ORS 517.125. DSL should increase annual communication and outreach when new maps are being considered.</td>
<td>Prior to each annual update, DSL will carry out a robust public comment and review process similar to the rulemaking process. The draft ESH map will be sent to key stakeholders, affected landowners, and the Department’s ESH listserv. A 30-day comment period will take place, and the Department will review and consider the comments before adopting the new map.</td>
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<td>Agriculture, Irrigation</td>
<td>Permitting</td>
<td>Annual updates will create confusion and make it difficult for districts and farmers to conduct regular operations and maintenance of delivery systems.</td>
<td>With the new, annual ESH update process, DSL will attempt to notify affected landowners of changes to ESH designations that affect their property. This will include an in-depth outreach and communications plan and noticing process and should reduce the confusion surrounding permitting requirements.</td>
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<td>Agriculture, Irrigation</td>
<td>Designations</td>
<td>The application of ESH designations to artificial water conveyance facilities is inappropriate. See full comments on p. 59 and 62.</td>
<td>ORS 196.810 provides a definition of “essential indigenous anadromous salmonid habitat.” The statute does not differentiate stream types. If you notice a mapping error or are aware of a fish passage barrier not currently reflected by the ESH map, please submit a request to change an ESH designation and mapping to DSL. DSL will submit requests to ODFW for consideration. This process is described in OAR 141-102-0040.</td>
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<td>Conservation</td>
<td>Compliance</td>
<td>DSL should notify the Department of Environmental Quality (DEQ) when a new ESH map is adopted, so DEQ can send notice to NDPES permit holders.</td>
<td>DSL will notify DEQ when a new ESH map is adopted.</td>
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<td>Conservation</td>
<td>Compliance</td>
<td>DSL should notify the Oregon State Police (OSP) when new ESH maps are adopted, and work with OSP and DEQ to monitor compliance and enforce violations.</td>
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<td>DSL will notify OSP when a new ESH map is adopted.</td>
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<td>Conservation</td>
<td>Compliance</td>
<td>DSL should coordinate with the U.S. Forest Service (USFS) and the Bureau of Land Management (BLM) to monitor historically mined waterways that are newly designated ESH.</td>
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<td>DSL will notify USFS and BLM when a new ESH map is adopted. The Department is responsible for investigating removal-fill complaints.</td>
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<td>Conservation</td>
<td>Outreach</td>
<td>DSL should include federally unrecognized Tribes in the tribal engagement process.</td>
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<td>ORS 182.162 provides the definition of “Tribe” as “a federally recognized Indian tribe in Oregon.” Each of Oregon’s nine federally recognized tribal governments has a distinctive legal and political status separate from other sovereigns, including other tribal governments.</td>
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<td>Conservation</td>
<td>Outreach</td>
<td>DSL should change the term ”affected parties” to “interested parties” in OAR 141-102-0000(2), -0010(2)(b), and -0030(4).</td>
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<td>The term “affected parties” is taken from ORS 196.810, which directs the Department to define and designate ESH “in consultation with ODFW and in consultation with other affected parties.” “Affected parties” is not defined in statute. DSL interprets that affected parties should include the variety of interests in designation of ESH.</td>
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<td>Placer Mining</td>
<td>Permitting</td>
<td>NPDES permit holders, including those who hold the 700-PM Water Quality General Permit, should have their permit fees refunded or the permit honored until expiration if ESH becomes newly designated in their mining areas.</td>
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<td>The 700-PM Water Quality General Permit is administered by the Oregon Department of Environmental Quality (DEQ). DSL will notify DEQ when a new ESH map is adopted.</td>
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<td>DSL recommends that NPDES permit holders potentially affected by the change in ESH designation for a waterway contact DEQ.</td>
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<td>General Comment</td>
<td>ESH Map</td>
<td>DSL should enhance the ESH map by adding additional information, such as genus, species, common name, and smaller streams and roads to promote readability.</td>
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<td>DSL will include additional information, such as scientific name, common name, and smaller streams and road names, on the ESH map when available.</td>
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<td>The <a href="#">Oregon Fish Habitat Distribution and Barrier Data Viewer</a> contains additional information related to species and observation.</td>
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Comments & Agency Response

Please note that comments are presented in the order they were received by the Department, with most recent comments listed first. The Department did not edit comments for spelling or grammar. General comments and comments that request the review of an ESH designation are presented separately (see table of contents). Comments that were received via PDF are attached at the end of the document.

General Comments Received via Comment Form

USDA Forest Service, Rogue River-Siskiyou National Forest – 3/19/21

The Rogue River-Siskiyou National Forest supports the new ESH designations. We have cross-referenced our salmon distribution data with the proposed changes and find that the changes are appropriate to protect anadromous species on Forest Service Lands. Thank you for the opportunity to comment.

Dennis Hebard, Mining Interest – 3/18/21

I object, commenting doesn't matter, you wont consider any comments from those who object, under "rulemaking" you are required to consult with mining interests, ORS 517.125 nothing our representatives brought up during the RAC meeting were taken seriously, so you moved forward without consultation of affected parties. In fact the changes to OAR are already being used anyway with change request forms. there are historical migration sections of the South Umpqua and main Umpqua being converted without following the data standard or stewardship guidelines using "DownstreamDocObsFish" this cannot a primary reason to assign ESH. changing from rulemaking to administratively assigning ESH removes the requirement to consult with affected parties.

Agency Response: DSL convened a rules advisory committee that included representatives of mining interests. The representatives chose not to attend all meetings, citing the limited scope of the rulemaking. RAC meeting materials and meeting summaries may be downloaded at https://www.oregon.gov/dsl/Laws/Pages/Rulemaking.aspx during this rulemaking, and are available upon request.

ESH designations on the South Umpqua and main Umpqua were expanded due to identified rearing habitat.

If you notice a mapping error, please submit a request to change an ESH designation and mapping to DSL. DSL will submit requests to ODFW for consideration. This process is described in OAR 141-102-0040.

Bo Bockelman – 3/16/21

I do not believe these changes are necessary. There rules add confusion to a already heavily regulated practice that has little to no effect of fish habitat. Time and resources would be better spent on finding solutions to the salmon problem. Solving problems that will not have an effect on the fish problem is a waist of time.

Good evening, I'm a current holder of a 700PM water quality permit and I have a few questions and comments regarding the new map.

- If passed, when will the new waterways be officially added to the map? (seems odd to add this mid year)
- How will this affect people who have already paid for a permit that have areas in the new ESH zones?
- Will there a way to add a special use/exemption to these new areas? All of the 700PM permit holders are using their permits when the species being protected isn't present. Below are a couple documents by the EPA, and the Oregon DEQ. The EPA document shows how salmonoids are affected by temperature. While the Oregon DEQ document shows the actual temperature of certain water ways when the 700pm permit holders are allowed in the water. I'll include a picture from the DEQ document as a quick guide. 700PM permit holders are limited by a season to protect salmon. This season was put in place during the months when the interaction between permit holder and salmon is pretty much non existent.


https://www.oregon.gov/deq/FilterDocs/umpchpt3temp.pdf

I believe in protecting salmon but I also believe that the 700PM permit holders shouldn't be thrown out of even more areas. There needs to be hard evidence showing the ill effects of what the 700pm permit holders are doing to salmon. The science is there, and the ODFW data needs to update to show when the migrations, spawning, and rearing are taking place. To me this is like taking away deer hunting, or stopping mushroom hunting on public land, or ending permitted firewood gathering. Its just silly. The goal is to protect salmon, not ban recreation.

Agency Response: The Department had a phone conversation with Mr. Lee on March 15 to discuss the fees for placer mining permits and the Department’s coordination with the Department of Environmental Quality.

Arthur McCoy – 3/9/21

I do not think any more areas should be added .The cost to the state would be a waste of tax payer money. It would also cause undo hardship to owners of property along waterways .It would also cause a burden to those who use the rivers with added cost by a small group who want there aggeenda reflected in wasteful new laws.

Carlee Michelson, Pacific Habitat Services, Inc. – 3/5/21

This is commentary on the new changes to ESH map published by DEQ in collaboration with ODFW mapping:

I would like to see a genus and species listed in the ESH mapping, as well as common name for the layperson trying to use this map. As a consultant required to use these maps, I frequently see conflicting information on this DSL ESH map compared to StreamNet Mapper and the SFAM/ORWAP Oregon Explorer interface. A disclaimer on the DSL ESH map stating which is the most up-to-date would be useful.
Dennis Hebard, Mining Interests – 3/4/21

I agree with making draft maps available in December it will help making decisions to renew or get permits. I have already paid for my 700pm permit based on what is in effect as of January 1st, Water Quality limited Streams and ESH I disagree changing from rulemaking to administratively designating ESH it is already being abused by activist posing as fish biologist, a single employee can change a whole river from migration to rearing. I disagree with using "down stream of documented observance" (DownstreamDocObsFish) to change the South Umpqua from migration to rearing from Lawson bar to the river forks. Once the river comes out of the mountains to the flat lands there is little protection from small mouth bass, no rearing is happening in the main channel, side streams and some side channels are their only refuge, this is even true of the main Umpqua other than a few side channel areas these are Migration. missing under ORS 196.810 (1)(g)(b) but uses "life history stages" seem to be a life stage that no longer maters it is preserved in the data standard v2 Migration Habitat Areas; where juvenile and/or adult fish pass through as they move between the ocean and spawning and rearing areas. While all migratory corridors provide some rearing opportunities, areas with this designation are distinguished by fish moving through fairly quickly making contributions to juvenile rearing insignificant.

Agency Response: See response to Mr. Hebard’s most recent comment above (p. 6).

Dennis Hebard – 3/4/21

I request a rule making extension ODFW Fish Habitat Distribution map is not working its important to know the why streams are being changed to ESH.

https://nrimp.dfw.state.or.us/FHD_FPB_Viewer/index.html

Mary Wahl – 3/4/21

Thank you for the chance to comment on these proposed rules. I applaud DSL’s work on this set of rules, and strongly support the additions made in my area. I also appreciate very much that DSL is proposing to update these Essential Habitat maps more frequently. Protecting the remaining habitat for salmon is critical, and doing it annually instead of every five years or so is a great improvement to the process.

My siblings and I own two ranches in northern Curry County, and I am involved with several projects to protect habitat in that area. I have commented several times in the past to DSL requesting that the Essential Habitat maps be updated, and am deeply appreciative for the current proposed additions to the maps.

The watersheds I know best include Langlois Creek, Floras Creek, Elk River and its tributaries, and Sixes River. The Essential Habitat areas identified by ODFW over the last few years that are on your proposed maps represent important additions to the streams in this area that will now be protected. Thank you for your work, and your proposed updates to these maps!
Linda Tarr, Port Orford Watershed Council – 3/4/21

Greetings, I am writing on behalf of the Port Orford Watershed Council. We work as volunteers on projects that connect government, non-profit, and private entities with the goal of protecting the North Fork of Hubbard Creek, both for drinking water and habitat.

We are all pleased to see that Hubbard Creek is designated as essential salmon habitat, and commend you for your foresight in amending your map to make this information available.

It is a matter of great concern to us that the reservoir which is the intake source of drinking water for Port Orford has a fish ladder that was incorrectly built, and which does not function as it should. We would like to work to correct this barrier to habitat, but this is an expensive and complicated project, beyond the means of this small town which has many challenges in terms of infrastructure. It is our sincere hope that this designation will help in our aspiration to correct this situation. Thank you for your efforts.

Doug Heiken, Oregon Wild – 3/3/21

Please accept the following comments from Oregon Wild regarding Revisions to the Oregon Essential Indigenous Anadromous Salmonid Habitat (ESH) Rules - DSL Chapter 141, https://www.oregon.gov/dsl/Laws/Pages/Rulemaking.aspx#707ec222-6495-4712-a727-f6b2cf6d68bd. Oregon Wild represents approximately 20,000 supporters who share our mission to protect and restore Oregon's wildlands, wildlife, and waters as an enduring legacy.

Oregon Wild supports the expansion of the essential salmonid habitat (ESH) maps and the continual improvement of those maps to reflect ongoing efforts to restore salmonids to their historic range throughout most of the state.

Salmon are an important part of Oregon's natural legacy. They provide human sustenance, recreation, income, cultural importance, and tremendous biophysical values affecting a wide variety of aquatic and terrestrial ecosystems, in large because salmon represent a perpetual conveyor of hundreds of tons of marine nutrients transferred to continental ecosystems often hundreds of miles inland. This is an irreplaceable value that will help store carbon in riparian and upland forests to reduce the worst effects of global climate change and ocean acidification.

Over the last 150 years, Oregon developed numerous industries and extensive infrastructure with little regard to the health of salmon runs, and now we are in the beginning stages of reversing or mitigating those impacts, by restoring water quality, restoring habitat complexity, and restoring salmon access to historic habitat areas. Consequently the range of salmon is in flux due to ongoing efforts to remove barriers to upstreams and downstream migration. The new rules should help keep the ESH maps up-to-date and timely.

Janet Neuman, Tonkon Torp LLP – 3/2/21

Hi Kaitlyn, I have looked at the maps on DSL's website and reviewed the proposed rule revisions—can you—or someone else—tell me if the proposed designation on Pole Creek outside of Sisters goes all the way to its source (in the Deschutes National Forest)? I assume it does, but the map is not very precise. Thanks.

Agency Response: The 2021 ESH map designates approximately 6 miles of Pole Creek as ESH, extending the designation approximately 3.75 miles upstream from the 2015 map.
Jim Yarbrough – 2/15/21

Why the Essential Salmonid Habitat (ESH) Map is Important
Updating these maps is the last step in closing the gap on protecting waterways from harmful in-stream mining practices. Created with Oregon Department of Fish and Wildlife (ODFW) data, the ESH map identifies streams where salmon and steelhead lay eggs and where young fish grow. Proposed Map, Process Updates With the current updates, based on ODFW habitat data, about 1,700 additional stream miles will be added as ESH. DSL is also proposing yearly map updates, outreach and public review. I support the lives and habitat of Oregon Salmon, which are such an important part of Oregon's history and culture, an attraction for tourism and recreation, and a resource for the fishing economy. Healthy and numerous salmon are an indicator of the better water quality that is vital for Oregon's health and economy. As climate change progresses, clean water will be increasingly important!

Jason Yaich, City of Corvallis – 2/12/21

Hello, for this project, is there an easy way to compare the new GIS data for the fish habitat identified within the Corvallis UGB, and the City's adopted Natural Features Inventory data showing similar stream and river reaches?

Agency Response: DSL provided the City of Corvallis with the necessary GIS data for comparison with the City's Natural Features Inventory data.

Lolly Anderson, Anderson Schultz LLP – 2/10/21

I’m hoping you can help with two questions to determine whether we should submit an ESH Review Request Form. 1. Would a barrier on an ESH-designated waterbody that is only in place during the irrigation season (but does not block fish passage during winter months) impact ESH designation? 2. Are there situations where DSL would require a landowner to remove a full-year barrier to fish passage on an ESH-designated waterbody?

Agency Response (email): The Oregon Department of Fish and Wildlife (ODFW) is responsible for implementing state fish passage laws and providing resources and information for those affected by the laws.

ODFW responses:

1. A seasonal barrier would not preclude an ESH designation as the habitat would be accessible for at least a portion of the year.
2. Since August 2001, the owner or operator of an artificial obstruction located in waters in which native migratory fish are currently or were historically present must address fish passage requirements prior to certain trigger events. Laws regarding fish passage may be found in ORS 509.580 through 910 and in OAR 635, Division 412. There are several preliminary items which must be considered before the owner/operator must address fish passage at an artificial obstruction:
   A. Is there a trigger? It is the responsibility of the owner/operator of an artificial obstruction to know whether they will trigger the need to address fish passage. However, if there is a question whether a particular action is a trigger, then ODFW should be contacted for trigger clarification. If an action is a trigger, fish passage will only need to be addressed if native migratory fish are currently or were historically present in the stream reach of the artificial obstruction.
B. Native Migratory Fish Determination. A local ODFW biologist should be contacted to determine native migratory fish presence at the site. If native migratory fish are or were historically present then fish passage must be addressed. Project proponents should assume that fish passage must be addressed regardless of stream size or seasonality if no determination from ODFW regarding fish presence is requested.

C. If there is a trigger and native migratory fish are or were present, then fish passage must be addressed. Since 2001, this entails either providing passage or obtaining a waiver (mitigation) or exemption (no appreciable benefit for fish passage). Providing passage is preferred, and this requires ODFW approval.

D. To better answer your question about when a trigger for the full barrier removal or actions for fish passage would occur, then we would need to know more about the barrier and any activity associated with construction, maintenance, or removal. There are definitions that determine a trigger that can be found in statute or administrative rule.

Nissa Rudh – 2/9/21

As a fisheries biologist living in Corvallis, I would like to express my whole-hearted support for the Department of State Lands update of the Essential Salmonid Habitat. Moves to increase protections on our native fish are important in a world where stream habitat is extremely degraded by our current land-use practices. Thank you for considering this expansion, it will help in the fight to save our salmon!

Steven Wright – 16 comments submitted between 2/4/21 and 2/20/21

The sightings of Rainbow trout does not necessarily prove that the creek is a steelhead habitat, especially if there are downstream natural barriers (i.e. 10 foot waterfalls).

How can a 8-10 foot waterfall be classified as passable to some species, but in other locations a 6 foot waterfall is impassable to all species?

Will the new map be used, when in fact there are known and identified flaws in the data, in the Briggs creek and its tributaries?

Will DEQ refund 700PM fees to those who can no longer dredge under the new ESH map? Renewals were done in accordance with 2015 map, and changing the rules after the fact will create undue financial damage.

Suction Dredge Holes Create Safe Habitat for Fish. Dredge holes 3 feet or deeper are considered adequate refugia for fish. Excavations from dredging operations can result in temporarily formed pools or deepen existing pools improve fish habitat. Pools created by abandoned dredger sites can provide holding and resting areas for juvenile and adult salmonids. Stern, G. R. 1988. Shown in attached document.

Small-Scale Gold Suction Dredge Tailings Protect Established Redds by Offering Additional Spawning Substrate in Areas of Limited Natural Substrate.

1) Salmonids show no preference for dredge tailings, for spawning, if natural substrate is available. If insufficient substrate is available Salmonids are left with the choice of spawning over, and destroying, previously built redds or using cleaned dredge tailings.

2) In areas where inadequate quantity of natural gravels exist dredge tailings provide a net benefit by saving previously built redds from destruction by later arriving salmonids and
at the same time provide excellent future spawning gravels from dredge tailings. This creates, an overall, net positive effect.


Tailing Piles from Small-Scale Suction Dredging may be Included in excellent Spawning Gravels

Suction dredging breaks up compacted steam beds. The gravels are dispersed by the high stream flows, which included dredge tailings, compose a portion of the suitable spawning gravels each year.

1) Gravels are dispersed by the high stream flows, which included dredge tailings, compose a portion of the suitable spawning gravels each year.

A stream/creek can be classified ESH for numerous reasons (see below), unfortunately this ESH classification is used by other agencies for requirement i.e. DSL and DEQ use it to prevent suction dredging regardless of the reason for ESH designation

ODFW Rogue Adult Fish Presence Survey
https://nrimp.dfw.state.or.us/DataClearinghouse/default.aspx?p=202&XMLname=201.xml

Any changes to the 2015 ESH map should be based on KNOWN (post 2015) data and not on outdated historical data.

I have looked at the data provided on the web site for the changes, and cannot find one single item that shows an actual salmon sighting in any of the proposed new ESH map areas. Please identify any data that shows a fish count or sighting used to generate the new ESH areas.

Why not make just make the ODFW guideline for in-water work times an RULE. They were created to establish times that work would not affect salmon spawning and fry. Rogue Rogue River ( Marial to William Jess Dam) June 15 - August 31 (CHS,STW*) Illinois River June 15 - September 15 (CHF,STW*) Applegate River July 1 - September 15 (CHF,STW*) Other Rogue River Tributaries (above Marial). June 15 - September 15 (CHS,STW*) Excerpts shown in attached document.

When additional restrictions are placed on suction dredging, the consequence is that people will still dredge, but without a permit, so they will ignore all requirements and guidelines. Final Result: Greater Harm I have seen their actions: under cutting banks, dredging outside timeframes, uprooting vegetation, removing underwater trees/logs, etc... Overall disregard for the environment.

ESH areas were, in part, created to stop suction dredging in order to improve salmon recovery. Despite no suction dredging in California for 10 years, and in Oregon for 10 years coupled with reducing the number of permits and increase cost for permits, THERE IS STILL A DECLINING SALMON POPULATION. PERHAPS SUCTION DREDGING IS NOT THE CAUSE.

I'm noticing that the new ESH map is very similar to the new BLM Mineral & Land Records System (MLRS) map showing active placer mine claims. ESH designated streams cannot be dredged. Is this new remapping action being taken to stop dredging for gold with no scientific data to support these actions?
It appears that besides Douglas County, all streams/creeks have their ESH extended to their source. Many of these have insufficient flow that far upstream. Is there any SCIENTIFIC DATA and/or OBSERVED SALMON in these new areas?

If you are truly concerned about restoring the population of salmon, Oregon needs to stop allowing anglers to catch them. Anglers kill more salmon than any other group except commercial fishing. Or at least make it illegal to keep female salmon.

Agency Response: The Department had a phone conversation with Mr. Wright on February 9 and explained how to compare the ODFW fish habitat distribution database with DSL’s proposed ESH map.

Stephanie Rosentrater, Marion County Public Works – 2/4/21

I work for Marion County Public Works and was asked to look into how the ESH map update might affect our work. Other than the removal-fill permit, is there anything else that uses the ESH map to help determine where work can or can’t be done?

Agency Response (email): DSL only uses ESH designations to determine the volume thresholds that trigger permitting decisions for removal-fill activities. An ESH designation does not affect the decision of where work can or can’t be done. However, it does reduce the threshold volume for when a permit is required, from 50 cubic yards to 0 cubic yards.

Garry Moore, Glide Water Association – 2/4/21

To Whom it may concern: I have lived in Oregon most of my life, am a hunter and fisherman and a board member of the Glide Water Association. I applaud the state and the ODFW in trying to help the fish populations but with that said I have watched the salmon and steelhead populations deteriorate to almost nothing. Also, the deer and elk populations in Oregon are in deep trouble because of the out of control predator problem and now the introduction of the very aggressive Canadian Wolves. Our wildlife will soon be a thing of the past and will not ever recover (like the fish) unless you stop your assault on them.

Back to the fish .... The state and the ODFW have totally mismanaged our fish and game for many years! You will not impact the fish depletion problem until you wake up and fix the problem of the things that predate on the fish. The seal and sea lion problem has been let go unchecked for so long that I can see (in the near future) that our fish will just disappear into oblivion. I quit fishing for salmon and steelhead 4 years ago (I'm 65 now) because the fish populations were so poor. Also, your lack of action in the early years of dealing with the small bass problem in the South Umpqua and the Main Umpqua caused major damage to our fish populations and other populations like the lamprey eel which has been decimated beyond repair.

And now I have been witnessing another major problem arising ... The problem of over logging by private lumber companies. The state allows these private lumber companies to make 1 square mile clear cuts (or larger) and log right over year round streams with impunity. This causes the temperatures to rise in those streams significantly in the hot summer months which in turn warms the waters of the bigger streams they drain into. As a board member of the Glide Water Association I see the effect of that on the North Umpqua with warmer temps and lower flow during the summer months and now even into the winter months. I know of a place up Little River that has an 8 mile long clear cut a 1/2 mile wide done by Senica Logging and I know that
they have logged over many year round streams in that 8 mile stretch! They are not required to leave buffer strips on these year round streams which would keep those waters cooler during those hot summer months. You all don’t seem to understand that everything that is done up in the higher elevations effects everything down stream. There are many places like this in the Little River drainage, Cavitt Creek drainage, Rock Creek drainage and even in the North Umpqua drainage. This is a problem and no one seems concerned about it. I (as a Glide Water Association board member) am very concerned about the affects of these type of practices affecting the water quality of the North Umpqua and Main Umpqua drainage systems. And now with the huge fire in the North Umpqua drainage system this last year it will only make things much much worst. This also affects the fish because of the rising temperatures of the water in these affected areas. It is my opinion that adding extensions to streams will not affect anything. It will not solve these problems!! I wish you the best of luck but if you don’t wake up and smell the roses nothing you do will solve the disappearance of our fish populations.

One more thing ... if you don’t start planting more fish in the North Umpqua river system and stop trying to just keep a native run you will watch (right before your eyes) the destruction and disappearance of the salmon and steelhead runs permanently and they will never return!! Sincerely, Garry Moore A concerned Oregonian

Walt Smith – 2/4/21

I grew up playing in an old growth forest. Then I watched it butchered by a logging company, and the creeks stopped flowing for years and the trees were replaced by brush. Eventually it healed itself when left alone. So, I appreciate reasonable controls on the damage humans can and will generate. I have some Native American blood and that’s probably why I love the natural world so much and lament such evils as pollution and greed. We are accountable to the Creator for our actions and attitudes. However, I would appreciate it if, in your processes, you will consider whose interests you are serving by your decisions. In my lifetime, I’ve observed that those with influence tend to carry more weight than the average person. Please be fair in whatever decisions you make. For instance, I’m pretty sure that hobby gold prospecting was throttled out of existence due to the influence of a couple of politicians in the Ashland area. I didn’t react to it because I’ve learned that that’s just the way it goes, and it was just one less recreational option for my family. (I really don’t think small hobby prospecting that moves some gravel around destroys the environment.) I don’t have an opinion about your current discussion. I just ask you folks to be reasonable.

Jack Swisher – 2/2/21

I support the proposed rule to designate new areas as Essential Salmonid Habitat in Jackson County especially, but in all areas of the state as well.
Dear Rules Coordinator,

Thank you for the opportunity to provide public comments on the Revisions to the 2021 Essential Salmonid Habitat (“ESH”) maps. I support the draft ESH designations and additions. I particularly support the extension of ESH on Sucker Creek in southwest Oregon for one mile to the Siskiyou Wilderness Boundary and the long overdue ESH designations for Briggs Creek and its tributaries.

ESH designations and additions are crucial for salmon bearing streams in the Rogue Basin and across the state to protect waterways from harmful instream motorized mining practices as put into law by Senate Bill 3 in 2017. These designations and additions to the map are appreciated and long overdue.

Along with the new designations and additions to the ESH map, I ask that the Department of State Lands (DSL):

- Provide the Department of Environmental Quality (DEQ) the adopted ESH maps so that they can notify suction dredge miners with NPDES permits that the permit is no longer valid for that newly designated ESH waterway.
- Notify miners that any motorized dredge mining in newly designated ESH would violate DSL’s regulations.
- Inform the Oregon State Police of the changes and provide the agency real time access to the updated ESH maps so as to effectively enforce the 2021 ESH map during the motorized dredge mining season.
- Monitor monthly on historically mined waterways like Sucker, Briggs, and Silver Creeks in southwest Oregon and coordinate with the Forest Service and BLM.
- Publicly state how implementation of revised ESH designation updates and revisions will be conducted and coordinated with other state agencies and partners, including the BLM and Forest Service and provide a written statement regarding its process for coordinating with DEQ about the implementation of 2021 revised ESH with clear timelines.

I support the new ESH designations, additions and updates to the statewide map and ask that the Department take these asks into consideration for future transparency of process and to protect Oregon’s salmon bearing waterways.

Thank you for the opportunity to provide public comment on this process.

Additional Text (individual messages):

- “I grew up in Gold Beach Oregon at the mouth of the Rogue River, hunting and fishing are very important to me.”
- “Suction dredge mining is a gratuitous waste of our natural ecosystems for a fetish hobby and personal indulgence for which no compelling need of human sustenance exists. It is the miners’ moral equivalent of chasing animals with dogs and rounding up snakes for slaughter. The State of Oregon is not required to indulge the recreational wishes of every last person for the superfluous use of our natural resources, within streams known to be essential salmon habitat. As a former resident of Oregon, who retains great affection for its precious and verdant streams, I urge you to complete the
ESH designations for these overlooked streams, and take the appropriate steps to ensure that the closures are enforced, not tossed aside as a paper irrelevancy by suction dredge miners ideologically inclined to do so.”

- “Please implement the Revisions to the 2021 Essential Salmonid Habitat (“ESH”) maps, especially the draft ESH designations and additions. The extension of ESH on Sucker Creek in southwest Oregon for one mile to the Siskiyou Wilderness Boundary and the ESH designations for Briggs Creek and its tributaries are particularly welcome.”
- “I am a river guide and fisherman.”
- “Having clean rivers and streams protects not just the wildlife but keeps pollution out of our bodies where it ends up if we don’t do everything we can to proactively defend against it.”
- “My wife and I grew up with salmon in the rivers and creeks. We hope to live long enough to see their runs restored to some semblance of before. Their absence is very bad for our economy [sport and commercial fishing] and all life forms depending upon their nutrients. We 100% ask your support for the revisions and additions to the Salmonid Habitat mappings. All applicable waters need these added protective measures. We know that passing rules and regulations doesn't do all needed if the public isn't educated and law breakers caught and fined, big time. Therefore we ask for long running efforts to be conducted to inform all Oregonians about the new statuses. And every effort is made to help and aid the Oregon Game Wardens to enforce them. Old time exploitation [mines, dredging, cutting all the forest waterway edges] is past its day. Long term they are economic losers for Oregon's economic life. Recreation is the growing, biggest economic factor, especially on the Coast, and better protection for salmon and trout will pay off big time in dollars spent and circulated, taxes generated decade after decade.”
- “I support protection from pollution and destruction and misuse for all waters in our state. Life is not possible without functioning watersheds/streams, everyone in our state benefits when we protect waterways.”
- “There is a serious but solvable problem.”
- “The health and viability of salmon habitats is an issue I follow.”
- “I happen to live on the shore of the beautiful (if misnamed) Sucker Creek in Josephine County. We are always thrilled to see salmonids in 'our' creek. I implore you to provide maximum protection to its headwaters.”
- “If you lived on one of these streams, what would you do? If you were a salmon, who would you vote for? The opportunity to provide public comment on this process is crucial since it is public land and someone needs to be the voice for the salmon.”
Form Email, 45 responses received

Dear DSL Rules Coordinator,

Thank you for taking critical steps to ensure the protection of Essential Salmon Habitat in Oregon’s watersheds. We are excited to support the new designations on the ESH map — the additional protection of 1,700 stream miles is a big win for salmon, those who depend on them, and for the ecosystem as a whole.

I am also writing to express my support for the new ESH designation process. It’s very important that habitat is added to the map as soon as possible once it is discovered, and the proposed process is an excellent step in that direction. I also implore DSL to take the steps necessary to ensure that map updates are adequately communicated to the public and that designations are well-enforced to avoid illegal destruction of ESH.

As an advocate for Native Fish Society I realize how important salmon are to the ecosystem and to thriving local communities, particularly tribes, who have an unmatched connection with anadromous fish. I am happy to see that DSL will work to engage with local tribes in the ESH designation process, and I ask that the agency actively engage with all tribes, including federally unrecognized tribes. I also ask that DSL make the designation process as inclusive as possible by identifying ESH in consultation with both affected and interested parties.

Thank you again for your dedication to protecting ESH — the additions to the map and the new designation process are vital to the protection of Oregon’s salmon and ecosystems.

Additional Text (individual messages):

- “In this regard, I note that, while the middle and south Forks of Lake Creek near Camp Sherman are currently listed as ESH, the map does not include the full length of Lake Creek up to Suttle Lake as a watershed to protect in the future. Nor does it seem to include Link Creek between Suttle Lake and Blue Lake. Historically, these watersheds were critical habitat for sockeye salmon spawning. As sockeye are part of the anadromous fish re-introduction program currently underway at the Pelton/Round Butte complex on the Deschutes River, it seems crucial to include these portions of the watershed as protected Essential Salmon Habitat.”
- “In addition to the form letter information below, I'd like to add that I feel it is just as important to protect our larger, commercial rivers (Willamette, Columbia) as feeder streams. Too often these larger rivers are given over to abusive recreational boating that destroys shoreline habitat. Salmon are way too important to the people of Oregon - they need to remain a top priority as they are a critical natural resource and they rely on our rivers.”
Designation Comments Received via Comment Form

This section details the Department of State Lands and the Oregon Department of Fish & Wildlife’s (ODFW) coordinated response to comments questioning or suggesting specific changes to proposed ESH designations that were received during the public comment period for this rulemaking.

Comments are numbered and presented in reverse chronological order. Designation review requests submitted via PDF are included below; the numbers on the PDF documents correspond with the agency responses listed here. Large attachments containing data are not included in this document but are available from the Department upon request.

1. David Bugni, Clackamas River Basin Council – 3/19/21

Please refer to the attached comments (PDF file) for a description of suggested corrections to the ESH map for the North Fork Eagle Creek watershed (a tributary of Eagle Creek, which flows into the Clackamas River). Thank you.

*PDF comment attached, page 32*

*Agency Response:* The ESH designation for Suter Creek was extended after ODFW reviewed and verified the information. More information is needed to extend the designation for Grabenheim Creek.

2. Josephine County Board of Commissioners – 3/18/21

*PDF comment attached, page 44*

*Agency Response:* No specific sites were identified, therefore there is no sound basis for the requested removal of ESH designations in Southwest Oregon. No evidence of a lack of suitable salmonid habitat for ESH designations was provided.

3. Herman Baertschiger Jr., Fort Vannoy Irrigation District – 3/16/21

*PDF comment attached, page 46*

*Agency Response:* Portions of Lathrop Creek have been designated ESH since 2015. The 2021 map extends the ESH designation approximately two miles upstream based on documented observations of Coho and Summer Steelhead rearing habitat. Therefore, prior to conducting future activities along Lathrop Creek, DSL recommends contacting the Aquatic Resource Coordinator for Josephine County, Bob Lobdell, for technical assistance.

In 2014, DSL made the determination that a portion of Lathrop Creek (T36S R6W S16 - tax lot 105) is a jurisdictional ditch per OAR 141-085-0515(8)(a); therefore, it is subject to state removal-fill permit requirements. Designation as ESH does not affect this determination. However, DSL’s exemptions for certain activities and structures, specifically for maintenance or reconstruction of water control structures in jurisdictional ditches [OAR 141-085-0530(4)], may be appropriate for this location.
4. Justin Gindlesperger, City of Central Point – 3/10/21

Based on the annual evaluations of the creeks in Central Point, and given the amount of structures and obstacles in place, the extension of ESH along Mingus and Elk Creeks within the City of Central Point do not appear to be consistent with the existing conditions of the creeks. As mentioned, there are numerous obstructions along these creeks that would act as fish barriers, the creeks experience very low flow periods, and are highly channelized. Our Public Works staff walks the creeks annually, as such, we can provide pictures and documentation of these sections. Thank you.

Agency Response: ODFW has documented evidence of Summer Steelhead in both Mingus and Elk Creeks.

5. Jason Yaich, City of Corvallis – 3/5/21

Hello, I was able to compare the GIS data you provided for the salmonid habitat, in the vicinity of the Corvallis Urban Growth Boundary, with Corvallis’ adopted Natural Features Inventory information. The Natural Features Inventory was adopted in 2004, and includes data sheets for riparian corridor assessments totaling 3,750 acres in the Corvallis UGB.

The data sheets indicate presence of salmonid species in many stream reaches beyond the data you provided. I believe DSL reviewed our Natural Features Inventory information back in 2004, and supported the consultant’s analysis and conclusions that we have several river and stream reaches in Corvallis (beyond the Willamette, Marys and Oak Creek areas) that include salmonid habitat.

I have attached a screen shot of the comparison. Please note that not ALL of the blue/gray streams have confirmed salmonid habitat, but I did pick a couple of reaches to confirm that, at least according to the 2004 data, there are some areas where you may want to update your maps. I can also send links to the 2004 summary and technical reports + datasheets and maps if that would be helpful.

Does this email suffice for submitting official comments for your project, or do you need additional information?

Jason Yaich, Planning Division Manager (Corvallis) (Map attached to email in Comments folder)

Attachment: 2004 Map

Agency Response: Designation of ESH is limited to indigenous anadromous salmonids that are listed as sensitive, threatened or endangered. Coastal Cutthroat trout habitat alone will not extend an ESH designation since they are not considered anadromous without further information. Anadromy for the Coastal Cutthroat present could be supported if Steelhead presence could also be confirmed. Coho will not trigger an ESH designation at these locations because it is non-native above the Willamette Falls and is not considered sensitive, threatened, or endangered by state or federal agencies.


In case we need to get these in by today’s 5pm deadline I wanted to provide input on 5 streams that ODFW has made changes to since the ESH data were originally provided. The attached
shapefile has an ESH_Change field that describes the proposed change. Three are minor additions in the upper N Fk Umpqua due to passage upstream of Soda Springs Dam – approximately 4 miles of additional habitat.

The other two include one downstream adjustment due to the identification of a barrier and one deletion due to a mapping error. Both of these are also in the Umpqua basin.

We will also have other changes to propose where we are updating the habitat use type designations in estuary areas – effectively map errors where there is overlap with spawning. I plan to submit these before March 18th.

Please let me know if you have questions.

Attachment: Shapefile showing changes to ESH designations

Agency Response: ODFW is the steward of the data, so no response from DSL is needed. The changes submitted by ODFW and an explanation of why they are necessary is available from the Department upon request.


Attachments: ESH review request form and supporting photos

Agency Response: A portion of the ESH designation at Stanfield Drain was retracted based on a recent site visit by the ODFW district biologist. The remaining ESH designation is based on a concurrence of professional opinion that Summer Steelhead use this habitat primarily for rearing.


Attachment: ESH review request form

Agency Response: These types of change requests require edits to the National Hydrography Dataset (NHD) mapping. Where the NHD map is incorrect, ESH designations will follow the connected waters. The agency suggested that the correction be sent to Oregon’s NHD map stewards for consideration.


The Luckiamute Watershed Council (LWC) and its partners have implemented restoration projects in recent years that have removed barriers to fish passage. This comment provides the name of the stream and approximate latitude and longitude of the downstream end and upstream end of the reach proposed to be added to the ESH due to removal of a previously existing barrier. Benton County, Price Creek. Two culverts replaced in 2016. Downstream end of reach to added: 44.668124, -123.374354 Upstream end of reach to be added: 44.662746, -123.340273 Polk County, South Fork Pedee. Culvert replaced with a bridge in 2019. Downstream end of reach to added: 44.779378, -123.467961 Upstream end of reach to be added (remaining barrier): 44.789190, -123.488302 In addition to these reaches that can be extended due to removal of previously existing passage barriers, the LWC conducted snorkel survey "rapid bio-assessments" from 2008 to 2011 in some areas of the watershed, where cutthroat trout and steelhead trout were identified in Boulder Creek, tributary to the Luckiamute
River. These data were submitted to ODFW upon project completion in 2011 or can be provided by the LWC. Downstream end (confluence with Luckiamute River): 44.793845, -123.591784 Upstream end: 44.798968, -123.586127

**Agency Response:** Updates were made to Steelhead distribution in Boulder and Pedee Creeks, but Price Creek will require additional follow up outside of this ESH update window. ODFW encourages the Watershed Council to continue to coordinate with ODFW for the next ESH update.

**10. Farmers, Middle Fork, and East Fork Irrigation Districts – 3/3/21**

*PDF comment attached, page 65*

**Agency Response:** ODFW agrees that natural barriers limit distribution on the south and north forks of Green Points Creek and has retracted ESH designations to those barriers in line with the comments. Regarding the Clear Branch Dam, ODFW deleted a small extension of ESH that appeared to cross the dam in error but is keeping the ESH designation for the spillway pools because of observational data of ESH species using the pools for rearing.


Dear Oregon Department of State Lands Staff,

In 2019 and 2020, snorkel surveys for salmonids were conducted in the Yamhill Basin by Bio Surveys, LLC for the Greater Yamhill Watershed Council and the Bureau of Land Management. These surveys documented the distribution of anadromous salmonids (Willamette winter steelhead and coho salmon) in many streams throughout the Yamhill Basin.

The proposed Oregon ESH update does not include the full distribution of anadromous salmonids in several streams in the Yamhill Basin. Those streams, along with documented anadromous distribution distances, are listed below.

A report and database have been published for the 2019 surveys, which are attached to this email. The report and database for the 2020 surveys will be available spring 2021, which I can email to you. If you have questions about anything, please contact me at (email redacted) or Luke Westphal, the director of the Yamhill Watershed Council, at (email redacted).

**South Yamhill River Watershed**
- East Creek anadromous salmonid distribution continues 3.2 miles past the confluence with Willamina Creek to a ~15ft falls at 45.17753, -123.44911.
- La Toutena Mary Creek (tributary of East Creek) has anadromous distribution to a 30ft bedrock falls at 45.18295, -123.46013.
- Rowell Creek (tributary of South Yamhill River) has anadromous distribution to 44.98164, -123.58370 where the stream channel becomes steep and narrow.
- Cow Creek (tributary of South Yamhill River) has anadromous distribution to Brush Lake at 45.03608, -123.62268, which is a reservoir with a small dam.
- Lafollette Creek (tributary of Gold Creek) has anadromous distribution to 45.01477, -123.52378 where the stream channel becomes small and steep.
- An unnamed tributary of Lafollette Creek has anadromous distribution to 45.14020, -123.62539 where the stream channel gradient becomes steep.
• Agency Creek (tributary of South Yamhill River) has anadromous distribution up to a falls at 45.17832, -123.69877.
• Joe Creek (tributary of Agency Creek) has anadromous distribution to a large sill log with plunge pool at 45.14020, -123.62539.
• Hanchet Creek (Tributary of South Yamhill River) has anadromous distribution to a culvert under Hwy 22 with a 6 inch perch with flow spilling onto riprap at 45.10568, -123.74276. It didn’t appear to be an adult salmonid barrier but anadromous fish were not seen above it.
• Kitten Creek has anadromous distribution to 1.25 miles upstream of the confluence with the South Yamhill River, where the stream channel becomes small and steep.
• Pierce Creek has anadromous distribution to 1.56 miles above the confluence with the South Yamhill River. Distribution ends at an 8 foot bedrock falls.
• Ead Creek has anadromous distribution to a 300 foot long bedrock slide that is 2.21 miles upstream of the confluence with the South Yamhill River.

North Yamhill River Watershed
• Panther Creek (tributary of North Yamhill River) has anadromous distribution to Carlton Reservoir at 45.30479, -123.34938.
• An unnamed Trib of North Yamhill River had coho salmon present to 45.38060, -123.23143.

Attachment: BLM_North Yamhill_Willamina_RBA_2019_Final_Report_4_1_20
Attachment: Yamhill_Rapid_Bio-Assay 2019_02282020

Agency Response: Coho will not trigger an ESH designation at these locations because it is non-native above the Willamette Falls and is not considered sensitive, threatened, or endangered by state or federal agencies. Other species observations may provide adequate justification for an ESH designation, but they need to be provided by at least a Category 2 provider and verified by Category 1 provider, as laid out in the ODFW Stewardship Plan. ODFW will require additional information to review these designation change requests. DSL encourages GYWC to continue to coordinate with ODFW on the next ESH update.


Hello and thank you for the opportunity to make comments on the proposed 2021 Essential Salmonid Habitat rulemaking process. The Sutherlin Water Control District was formed in 1959 to control the flooding of the City of Sutherlin, with two reservoirs in place to control the stream flows through the City of Sutherlin. Plat I reservoir’s primary purposes are flood control, irrigation and recreation. Plat I is a homogenous earth structure that is 1,240 feet long and 33 feet high and was designed to hold 1,330-acre feet. Plat I inlet waters are Sutherlin Creek that does not flow in the dry summer months (non-perennial) and with only 9 square miles of draining area. This is why we close the discharge gate in February to store water for the irrigation season. We drain the reservoir in October and go into flood control mode for 4 months. Cooper Creek reservoir’s primary purposes are flood control, municipal/industrial water supply and recreation. Cooper Creek is a homogenous earth structure that is 500 feet long and 88 feet high and was designed to hold 4,830-acre feet. With 4.4 square miles of draining area during the dry summer months, we get no flow into the reservoir and do not release water downstream. With no fish passage at the dam, fish cannot enter the reservoir and cannot move up stream. In conclusion, I feel both Sutherlin Creek and Cooper Creek are non-perennial due to no flows in the dry summer months. July through September is my permitted instream work season, which means
with no water flow, maintenance of the creeks can be done. Therefore these waterways cannot be Essential Salmonid Habitat. Thank you, Robert Rippy District Manager Sutherlin Water Control District

Agency Response: The dam below Copper Creek reservoir is a barrier, which is the reason no ESH designation is mapped above the dam. ESH will remain up to the dam. For Sutherlin Creek, ODFW has documented observations of Coho and Winter Steelhead above and below the Plat I Reservoir. The barrier at Plat I Reservoir has been identified as partially passable; therefore, it does not create a barrier to upstream habitat.


PDF comment attached, page 68

Agency Response: ODFW would need observation data or a consensus of professional opinion to extend the ESH designation for Sucker Creek as suggested. However, the ESH designation for the creek was extended approximately 0.8 miles since the 2015 ESH map was released. The 2021 mapping designation is currently 1,400 feet short of confluence with Grizzly Gulch.

14. Melissa Brown, City of Portland Bureau of Environmental Services – 2/19/21

PDF comment attached, page 72

Agency Response: ODFW extended the ESH designation for the Lower Columbia Slough after reviewing the provided data.

Coastal Cutthroat trout alone does not trigger ESH designations for the upper reaches of Fanno and/or Saltzman Creeks. Anadromy for the Coastal Cutthroat present could be supported if Coho or Steelhead presence could also be confirmed.

15. Alan Fujishin, Gibson Family Farms, Siletz – 2/17/21

PDF comment attached, page 74

Agency Response: Regarding Dewey and Miller Creeks, ODFW has documented observation of Coho in lower Dewey and documented observation of Steelhead in lower Miller, so disagrees that the falls at the mouth of Dewey blocks anadromous fish to both these streams. The potential barrier at the mouth of Tangerman Creek was observed by the ODFW district biologist on March 3, 2021 and was determined to be passable.

16. Robert Crouse, Josephine County Farm Bureau – 2/16/21

I am located at (address redacted for privacy) and am farming approximately 450 acres which Vannoy Creek and Lathrop Creek run through. I am opposed to including any portion of either creek to 141-102 - Revisions to Essential Salmon Habitat maps. Both streams would be dry during the summer and fall months June through October if not for the agriculture lands being irrigated. During those months the only water in the streams are from irrigation. This is easy to verify as the streams are completely void of flowing water or standing water at any elevation above the irrigation canals. Lathrop and Vannoy Creeks have both been substantially modified in thier respective course of water flows over the years by farmers to accommodate farming. In its original course Lathrop Creek never would have intersected Vannoy Creek. The drainage
above the agriculture lands have been substantially developed by builders into residential lands, resulting in changing of waterways and causing much erosion that flows downstream and clogs the Creeks in the farmlands. Without the ability to clean the silt and debris from the creeks the creeks will cease to exist, even winter access will be denied to the fish. Both creeks are used as transfer ditches for irrigation water by Fort Vannoy Irrigation District and Grants Pass Irrigation District. This would hamper and could eliminate irrigation water from reaching some irrigated lands.

Agency Response: ESH designations for Lathrop Creek can be found in the agency’s response to Herman Baertschiger Jr. of Fort Vannoy Irrigation District on page 19. No changes in ESH designation were made to Vannoy Creek during the 2021 ESH map update; current designations are based on documented observations of Coho and Summer Steelhead.

17. Zac Mallon, Lower Nehalem Watershed Council – 2/16/21

Hi DSL,

Here are our comments for the Essential Salmon Habitat map revisions.

- Trail Creek Addition (NF) – We support this addition. The Anadromous potential is limited but it provides valuable cold water in the summer to the NF Nehalem.
- Peterson Creek - We support this addition.
- Anderson Creek – The essential designation is being pulled back to a temporary barrier. We would like you to reconsider this change as the temporary barrier may wash out (or may have already).
- Hanson Creek – The essential designation is being pulled back to a temporary barrier. We would like you to reconsider this change as the temporary barrier may wash out (or may have already).
- Lost Creek (MS) – Even with the reduced essential habitat it’s still extending beyond a permanent anadromous barrier.
- Cronin Creek (MS) – This reduction matches with a permanent barrier.
- Punchbowl Creek (NF Trib) – We support this inclusion and extension.
- Grand Rapids Creek (NF Trib) – We support the inclusion of Grand Rapids Creek.

The attached file is the LNWC's recent Rapid Bio-Assessment and Limiting Factors Analysis and a gdb for the mainstrem surveys (the NF has not yet been converted into ArcMap files yet. It includes the barriers (permanent or temporary) mentioned in these comments.

Attachment: Nehalem_RBA_Database_2008-2019_05262020
Attachment: LNWC_RBA_Data_2016

Agency Response: ODFW has observation data upstream on Lost Creek, so no changes are warranted. Hanson and Anderson Creeks have gradient limits upstream, so no changes are warranted at this time. However, ODFW encourages the Watershed Council to coordinate on potential designation changes in the next ESH update.

18. Chris Stevenson, Oregon Department of State Lands – 2/9/21

The ESH mapping stops just west of the 101 Bridge on Hoquarton Slough in Tillamook. Russ Klassen knows of fish stranding at least 2 miles upstream and Mike DeBlasi confirms no tide gate or other blockage at the bridge. Mapping likely needs to be extended in this area.
Agency Response: ODFW district biologist agreed, and extended Coho rearing habitat up the extent of the slough (approximately an additional 1.5 miles).

19. Steven Wright – 2/9/21

Briggs creek and tributaries: Data is unreliable and no decision on extending the ESH boundary should be made. YOU CANNOT OBSERVE WINTER RUN FISH IN THE SUMMER.

Natural barrier approximately ½ mile upstream from Illinois River: Series of 8-10 ft falls that blocks salmon but not steelhead (USFS). A barrier to at least some fish at some time (ODFW).

If salmon cannot get past barrier, neither can steelhead.

**SUSPECT DATA:**
Jerry Vogt of ODFW *(dates do not coincide with migration times)*
   - Briggs Creek below barrier (salmon do not travel ½ mile to a non-spawning area)
     - Fall Chinook 2016 05 12 opinion
     - Coho 2013 03 29 opinion
     - Winter Steelhead 2002 07 29 direct observation:

Upstream of the natural barrier: Briggs Creek and tributaries

**SUSPECT DATA:**
Jerry Vogt of ODFW *(dates do not coincide with migration times)*

   - Winter Steelhead by observation
     - Briggs Creek 2002 07 29
     - Swede Creek 2002 08 09
     - Onion Creek 2000 10 31
     - Secret Creek 2002 07 29
     - Myers Creek 2011 04 27
     - Dutchy Creek 2002 07 29
     - Red Dog Creek 2002 08 08

Three other observers 2016 06 20

Source: [https://nrimp.dfw.state.or.us/FHD_FPB_Viewer/index.html](https://nrimp.dfw.state.or.us/FHD_FPB_Viewer/index.html) with Layers 1) Oregon fish passage barriers Sub layer Oregon fish passage barriers by type and passage, and 2) Oregon fish habitat distribution sublayer Fall Chinook, Coho, winter steelhead

Agency Response: Juvenile salmonids (Coho and Steelhead) are found in these streams year-round, which provide critical rearing habitat.

20. Steven Wright – 2/5/21

Why is the South Umpqua River now listed as an ESH? Salmon do not spawn here.

**Agency Response:** ODFW has documented observation of juvenile Coho rearing from snorkeling surveys in the South Umpqua River.
21. Steven Wright – 2/4/21

The addition of Briggs creek and its tributaries past the current 2015 point is baseless. The 2015 map stops at a 20 foot waterfall. No salmon can get past this. There is no documented salmon upstream from this point.

Agency Response: ODFW has documented observations from the U.S. Forest Service for Winter Steelhead spawning in these creeks. This steelhead evolutionary significant unit (ESU) is found on the federal sensitive species list and thereby meets ESH designation criteria.

22. Brian Sparks, Eden’s Gate Ranch & Properties – 2/2/21

I just learned of this proposed update to the ESH regarding the South Fork of Ash Creek above the old mill dam site at Independence. As an affected property owner, I can’t understand how this change did not consider extending the status of the Main stem of Ash Creek West of Hwy 99, or including the Middle Fork of Ash Creek thru to Hwy 99. It makes little sense that all these seasonal flowing, non gravel laden streams are being treated differently. Please provide any data that suggests this different treatment is justified. The extension of the status of the South Fork of Ash Creek west of Hwy 99 for several miles does not appear justified. The existence of historical low water agricultural crossings on the South Fork between the Dam site in Independence and Hwy 99 as well as the recent installation of three large irrigation ponds that extract water from the creek between Hwy 99 and Talmadge road suggest that fish passage if any on the South Fork is far more restricted that of the Main stem or the Middle Fork. I have not observed any salmon or trout, or any other fish in the creek on our property which is west of Helmick Road. Do you have any recent survey information that has found active fish usage West of Hwy 99? If so could you please provide access to that information. Our stretch of the creek was restored and placed in a conservation easement in 1996 under DSL monitoring. The slope reduction along the creek banks has reduced the recurring bank collapses on our property, but they continue between us and Helmich Road are partially blocking the creek in areas. Unfortunately the tree planting as part of this project has done little due to the highly seasonal water flows that are almost non existent June thru October. Shading helps very little when there is no water to cool. In 2012 We spent in excess of $250,000 removing the historical earthen fill agricultural crossing on our property, and installing a full span bridge that would allow all season access to our property across the creek. The old crossing did incorporate culverts that would have allowed fish passage under all stream flow conditions, however the earthen fill required periodic maintenance after seasonal high water levels over topped the structure. There are likely other low water agricultural crossing up stream that may restrict water flows or fish passage. The simple removal of the Dam at Independence does not in itself mean all the stream is appropriate for upgrading to the proposed status. Please reconsider your proposal until you have a specific stream survey to document the existence of salmon and trout on the western portion of South Fork of Ash Creek, and limit the west boundary to Hwy 99 like you have done for the main stem.

Agency Response: ODFW conducted some initial sampling in the Middle Fork of Ash Creek (MF) in February 2021 using both box traps and electrofishing. We did not find ESA-listed fish species with this effort; however, we did capture a Cutthroat trout and the habitat looks promising. Given that we do not yet have sufficient data, the MF will not be designated as ESH on the 2021 map. ODFW intends to conduct additional sampling and further evaluate the habitat within the next few years. Regarding the South Fork of Ash Creek (SF), the juvenile Winter Steelhead trout captured was around Helmick Road in January 2017. Since we are unaware of any permanent natural fish passage barriers above this point, we included ESH to Mistletoe Rd.
If you are aware of any permanent, natural fish passage barriers between Helmick Rd and Mistletoe Rd, please let us know. Based on current data, the proposed ESH designations look correct.

23. Tiffany Harrell, Stanfield Irrigation District – 2/2/21

I am trying to complete the ESH Review Request form and I have a question about the “Legal Description” where it wants the map and tax lot info. The map has the Stanfield Drain marked as an Essential Salmonid Habitat and it is not. It is just that…. A Drain. It doesn’t go anywhere. But it runs through several Townships, Ranges, Sections & Tax Lots. So how should I fill this out? I have attached a copy of the “Proposed Map” so you can see what I am referring to.

Attachment: Proposed Map

Agency Response: See the response to #7.

24. Charles Rodgers, Williams Creek Watershed Council – 2/2/21

I would like to suggest a revision to the map extent of salmon presence on the East Fork Williams Creek. Presently the extent goes up only as far as was drawn in years previously, but we have found habitat and juveniles of salmonids further upstream than the maps show. I can provide a ODFW survey form that shows some fish presence further upstream than shown although not a lot of studies have been done in this reach. Would you like me to conduct some more research in this area?

Attachment: Pipe Fork East Fork Final Fish Survey (PDF)

Agency Response: There is insufficient information to make this change based on the presence of Coastal Cutthroat alone. Anadromy for the Coastal Cutthroat present could be supported if Coho or Steelhead presence could also be confirmed.
March 19, 2021
VIA ONLINE SUBMISSION

Rules Coordinator
Department of State Lands
775 Summer Street NE, Suite 100
Salem, OR 97301

RE: Letter of Support for Proposed Updates to Essential Salmon Habitat Map and Proposed Updates to Essential Salmon Habitat Mapping Process

Dear Rules Coordinator,

Wild Salmon Center (WSC) appreciates this opportunity to provide public comment on the update to the state’s essential salmonid habitat (ESH) map proposed by the Oregon Department of State Lands (DSL), as well as the proposed process for more regular ESH map updates.

Wild Salmon Center works to protect and recover wild Pacific salmon and steelhead

Wild Salmon Center works with partners to conserve healthy wild salmon fisheries across the North Pacific. For more than two decades, WSC has worked with federal, state and local partners along the Oregon Coast in an effort to protect and enhance salmon strongholds. The stronghold approach is a unique conservation initiative that recognizes the positive impact of preserving and enhancing high quality habitat and robust populations, rather than restoring systems that are highly degraded or rebuilding populations already on the brink.

An accurate ESH map is an important piece of the recovery framework for Oregon’s salmonids because it helps preserve existing habitat from degradation related to proposed removal-fill operations and suction-dredge mining activities.

Wild Salmon Center supports DSL’s proposed map updates and process updates

The proposed 2021 updates to the ESH map have been developed based on the best available data from ODFW and would designate an additional 1,700 stream miles compared to the 2015 ESH map. These revisions bring coastal winter steelhead back into the ESH mapping framework and expand ESH designations for Chinook salmon, sockeye salmon, and coastal cutthroat trout. In addition, the proposed updates to the ESH mapping process will shift the map revision process from once every five years to annually, reducing the risk that changed conditions on the ground will be missed for years at a time. Furthermore, the proposed process updates facilitate greater transparency and
inclusion by allowing members of the public to propose ESH map updates and by including federally recognized Tribes in the mapping process.

Wild Salmon Center supports the proposed changes to the ESH map and to the mapping process.

Sincerely,

Caylin Barter
Oregon Water Program Manager
March 19, 2021

Rules Coordinator
Department of State Lands
775 Summer Street NE, Suite 100
Salem, Oregon 97301

Sent via email to rules@dsl.state.or.us

RE: Comments on DSL’s Proposed Essential Salmonid Habitat Map Updates

Dear Rules Coordinator:

Thank you for the opportunity to provide comments on the Department of State Land’s (DSL) proposed rule updating the Essential Indigenous Salmonid Habitat (ESH) mapping process and proposing modifications to the current ESH maps. Trout Unlimited (TU) is a non-profit organization dedicated to the conservation of cold-water fishes, such as trout and salmon, and their habitats. TU has more than 300,000 members and supporters nationwide including over 3,000 in Oregon.

TU supports DSL’s proposed update to Oregon’s ESH map, as well as its proposed process for more regular map updates. The ESH designation is a critical tool to protect salmonid spawning and rearing habitat from the effects of removal-fill projects and suction dredge mining and to otherwise provide guidance to water and habitat processes about salmonid species habitat use. The proposal to increase the ESH map updates from every 5 years to annually makes sense as the habitat range of salmonid species can change in a short time period due to events including but not limited to implementation of fish passage/habitat restoration projects or severe weather/catastrophic events. Additionally, the proposed process update increases public and tribal engagement by establishing a process for public review and comment of ESH mapping changes and outreach requirements to Oregon’s federally recognized Tribes. The proposal to update the ESH maps is warranted as it would designate an additional 1,700 stream miles as ESH habitat consistent with current Oregon Department of Fish and Wildlife (ODFW) salmonid habitat information.

In summary, TU supports DSL’s proposed changes to the ESH mapping process and the proposed ESH map updates. These changes will help ensure that ESH habitat throughout Oregon is adequately identified and protected and that the public and Tribes are afforded sufficient opportunity to engage in the process. Ensuring sufficient habitat protections for Oregon’s iconic salmonid species is necessary to promote their resilience to factors such as climate change, drought and population growth.

Thank you for the opportunity to comment on DSL’s proposed ESH rule.

Chandra Ferrari
Senior Policy Advisor
cferrari@tu.org
Comments regarding the proposed 2021 ESH map

The stream segments shown in maroon in the two maps below should be added to the proposed revisions to the Essential Salmon Habitat map (OAR 141-102). One location is Suter Creek (stream ID 1222596453133), a tributary of the North Fork Eagle Creek (HUC 170900110502). In terms of flow, according to the USGS StreamStats, Suter Creek is the second largest tributary of the North Fork Eagle Creek. Coho salmon (Oncorhynchus kisutch) and winter steelhead (Oncorhynchus mykiss) inhabit, for both spawning and rearing, the additional segments of Suter Creek shown in maroon, beyond that portion currently shown in cyan. This is based upon years of visual observations by members in the community as well as a ODFW Western Oregon Rearing Project (WORP) survey done in 2014. The extent of ESH currently shown in cyan in the proposed ESH map appears to be based upon periodic ODFW salmon spawner surveys within the ODFW-defined survey stream segments (30911, segments 1 & 2), which terminate at the eastern end of the currently-shown cyan-colored segment and not upon a complete stream survey of the entire creek. This proposed ESH map also does not indicate the name of this creek – the accepted name is Suter Creek.

Additionally, the current interactive map appears to indicate that spring Chinook (Oncorhynchus tshawytscha) is resident within the currently-shown cyan-colored portion of Suter Creek. It is highly unlikely that this creek will support spring Chinook due to the creek’s size. This species has never been observed, nor recorded in the ODFW spawner surveys. (Spring Chinook are, however, quite prevalent within the lower segment of the North Fork Eagle Creek (from its confluence with Eagle Creek upstream to about Bear Creek) and within the lower segment of Bear Creek – refer to the extent noted in orange on the map on the next page.) Therefore, the database should be corrected, and in its place, replace with the data about coho salmon and winter steelhead, noted above.

Perched, 36” diam. culverts (EGO79 B & C) that periodically block upstream salmonid migration unless circumvented by beaver dam constructions or optimal flows.

Additional segments of Suter Creek accessible year-round to anadromy (coho salmon and winter steelhead adults & juveniles observed) shown in maroon.

Stream segments of sporadic salmonid activity depending upon flows.

45°18’06”N, 122°13’47”W

Suter Creek
The smaller scale map below (encompassing a larger area than the previous map) depicts the principal five subwatersheds (Bear Creek, Suter Creek, Little Eagle Creek, Trout Creek and Grabenheim Creek, arranged in terms of descending flow rate) of the North Fork Eagle Creek. This map also diagrammatically indicates the extents of rearing and spawning of spring Chinook (in bold orange), coho salmon and winter steelhead (combined in red) within the North Fork Eagle Creek watershed. Note that Grabenheim Creek does not appear colored on the current ESH map and is added here (in maroon). While Grabenheim Creek is not currently surveyed for anadromy by ODFW, previous surveys in the 1950’s by the Oregon Fish Commission indicated the presence of coho and winter steelhead. Based upon recent observations by some members of the community, Grabenheim Creek does possess sufficient habitat for coho salmon and winter steelhead in the lower to mid segments (extent as shown), and evidence of fish activity (some reds and fry) have been observed. Regarding ODFW salmon spawner surveys in this area, segments of the following creeks are surveyed randomly and have been shown to contain anadromous fish: Eagle, North Fork Eagle, Suter, Little Eagle and Trout. The BLM has surveyed Bear Creek for salmon spawners as recently as about 2014; therefore, more in-depth information may be obtained from these sources. Also note the presence of perched culverts within both Little Eagle and Grabenheim creeks, which block passage of anadromous fish. (All culvert IDs (EGXXX) and their impediment to fish passage are from the “Deep, Goose and Eagle Creeks Fish Passage Assessment” prepared by WPN for the Clackamas River Basin Council in 2005 and these culverts currently remain in place (as of 2020).)

Of course, Eagle Creek has all three of these fish species (spring Chinook, coho and winter steelhead) ranging continuously from its confluence with the Clackamas River up to the Eagle Creek National Fish Hatchery. But, the information provided on the ESH map (the interactive database portion that is activated by clicking on the creek in question) is not clear in this regard.

Lastly, another vital piece of information that should be included in these maps are locations of salmonid High Intrinsic Potential. In the Clackamas River basin, such information can be found in Figure 4 (page 61) of the “Watershed Restoration for Native Fish Populations, Strategic Restoration Action Plan,” by the Clackamas Partnership, July 2018. This is vital for planning purposes.
For more information, please contact Mr. David Stewart, ODFW Field Biologist at dave.stewart@state.or.us or 503-225-8281 or 971-673-6035; or Mr. David Bugni at dbugni@cascadaccess.com or 503-502-7213.
March 19, 2021

Rules Coordinator
Department of State Lands
775 Summer Street NE, Suite 100
Salem, Oregon 97301

RE: Comments, Essential Salmonid Habitat Rulemaking (OAR 142-102)

Dear Rules Coordinator,

WaterWatch of Oregon is a river conservation group that works to protect flows in Oregon’s river and streams for fish, wildlife and the enjoyment of the public. We have members across the state who are concerned not only about the state of our rivers, but about the fish that inhabit them, including, in particular listed species. It is from that lens that we are commenting on the proposed rules on EHS habitat.

WaterWatch supports the proposed changes to the ESH rules in whole. We support the change to the mapping process that will increase the regularity of ESH map updates to allow annual updates. We support the inclusion of public review and comment. We support engagement with federally recognized Tribes in Oregon. We support the reliance on ODFW data/stewardship plans as outlined in OAR 141-102-0040. The proposed rule changes will add both efficiency and transparency to the ESH designation process.

WaterWatch also supports the 2021 ESH map updates that will designate an additional 1,700 stream miles to the 2015 ESH map. With increasing development pressures on Oregon’s rivers and streams, ESH designation is critical to protecting salmonid spawning and rearing habitat that is necessary to support salmonid populations that are ecologically, culturally and economically important to Oregonians.

In addition to voicing our support for the rules and the additional ESH map updates, we want to be on the record as opposing any attempt to strip the draft rules of their current reliance on ODFW and/or data/science, any attempt to move away from the more frequent updating that the draft rules allow, and any suggested narrowing of the proposed ESH mapping. ESH designations exist to protect fish habitat; as such ESH designations help provide balance against the many water and land use laws that allow degradation of our state’s important water resources. As such, we urge DSL to adopt the rules as proposed and to update the maps as indicated in the public notice.

Thank you for this opportunity to comment.

Sincerely,

Kimberley Priestley
Sr. Policy Analyst

WaterWatch of Oregon
Main Office: 213 SW Ash St. Suite 208 Portland, OR 97204
Southern Oregon Office: PO Box 261, Ashland, OR, 97520

www.waterwatch.org
Main Office: 503.295.4039
S. OR Office: 541.708.0048
Date: March 18, 2021

Sent via email: rules@dsl.state.or.us

To: Rules Coordinator
   Department of State Lands
   775 Summer Street NE, Suite 100
   Salem, Oregon 97301

RE: Oregon Chapter of the American Fisheries Society Letter of Support for Updating the Essential Salmonid Mapping Process and the Proposed 2021 ESH Map Updates

From: Oregon Chapter of the American Fisheries Society Executive Committee

The Oregon Chapter of the American Fisheries Society (ORAFS) is comprised of over 500 fisheries and aquatic science professionals from federal, state, and tribal agencies, colleges and universities, diverse private employers, college students, and retirees. ORAFS was established in 1964 as a chapter of the American Fisheries Society. Our mission is to improve the conservation and sustainability of Oregon fishery resources and their aquatic ecosystems for long-term public benefit by advancing science, education and public discourse concerning fisheries and aquatic science and by promoting the development of fisheries professionals.

ORAFS recently participated in the Essential Indigenous Salmonid Habitat (ESH) mapping rulemaking process. ORAFS was one of 18 organizations enlisted by the Oregon Department of State Lands (DSL) to provide input on proposed amendments to the administrative rules governing revisions, additions, or deletions to ESH maps. This letter provides ORAFS support for DSL’s proposed process that will result in more regular updates to ESH maps, and the proposed 2021 ESH map updates.

ORAFS supports the proposed ESH mapping process for the following reasons.

- The proposed mapping process will increase the regularity of ESH map updates from every 5 years to annually. The proposed review schedule will more efficiently reflect the benefits of fish passage projects that restore anadromous salmonid access to historical habitat.

- The proposed mapping process ensures transparency through a public review and comment period. The public can submit proposed ESH map updates for review by DSL and consultation with Oregon Department of Fish and Wildlife (ODFW).

- The proposed mapping process includes State engagement with Oregon’s federally recognized Tribes in Oregon. The process acknowledges the unique connections Tribes have with salmonids and salmonid habitat.

ORAFS supports the proposed 2021 ESH map updates for the following reasons.

- The proposed ESH map updates would designate an additional 1,700 stream miles to the 2015 ESH map. The 8 percent increase in stream miles proposed for ESH designation includes habitat for Klamath Mountain Province winter steelhead and coastal winter steelhead. Coastal winter...
steelhead were previously removed from the ESH maps.

- Other map revisions also include additional ESH designations for Chinook salmon, sockeye salmon, and coastal cutthroat trout.

- The proposed 2021 map update will provide habitat protection by requiring landowners and other entities to submit removal-fill permit applications for actions that alter ESH habitat. The proposed maps will also expand designated ESH habitat protections by expanding the number of streams protected from suction dredge mining under the Oregon Suction Dredge Reform Bill (SB 3) passed in 2017.

- ESH map expansion will help protect indigenous anadromous salmonid spawning and rearing habitat that is necessary to support salmonid populations that are ecologically, culturally, socially, and economically important to Oregonians.

Furthermore, while we acknowledge the following concern is not part of the current ESH rulemaking comment request, ORAFS encourages markedly improved monitoring and enforcement of ESH waters to uphold the intent of the law and the rules.

- ORAFS recommends monthly monitoring by state agencies (DSL, DEQ, and ODFW) during the typical summer-time suction dredge mining season to coordinate ESH protection. Violators should be reported to the OSP.

- Citizens who turn in violators should receive cash incentives if those violators are convicted.

- The equipment used in violation of ESH regulations should be confiscated, no subsequent permits should be granted, and the fines should be commensurate with repairing the damage caused by the violation.

In summary, ORAFS supports DSL’s proposed changes to the ESH mapping process and the proposed 2021 ESH map updates. The proposed mapping process will ensure more frequent updates that will more efficiently capture changes to indigenous anadromous salmonid habitat access. ORAFS also supports the proposed expansion of ESH designated habitat and the protections the expanded maps will provide to indigenous anadromous salmonids. Expanding habitat protections is critical for protecting Oregon’s fisheries resources in the face of increasing development pressures, to support recreational fisheries, and in recognition of the effects of climate change on salmonids. Nonetheless, better monitoring, reporting and enforcement are required because mapping alone cannot protect ESH.
March 17, 2021

Vicki Walker, Director
Oregon Department of State Lands
775 Summer St. NE
Salem, OR 97301-1279

RE: Essential Indigenous Salmonid Habitat Rule Making

Dear Director Walker:

This letter is submitted by the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians (the “Tribe” or “CTCLUSI”) in response to your letter dated January 28, 2021 seeking comments for the Oregon Department of State Lands (“DSL”) completion of the first phase of the rulemaking effort to update Oregon’s Essential Indigenous Salmonid Habitat (“ESH”) map and related rules (OAR 141-102).

The Tribe appreciates the opportunity to provide comment on the updated Oregon’s ESH map and related rules. We also want to thank you in particular and your staff in general for offering the tribe an opportunity to engage in government to government consultation with DSL on March 3, 2021.

The document with tracked changes is herein enclosed for your consideration and possible inclusion of our comments to the final rule. For any questions regarding these comments, please contact Roselynn Lwenya, Natural Resources Director, at (541) 435-7151 or rlwenya@ctclusi.org.

We appreciate your consideration of the comments.

Respectfully,

Chair Debbie Bossley
Confederated Tribes of Coos, Lower and Siuslaw Indians

Cc: Andrea Celentano | Policy & Legislative Analyst
Pete Ryan peter.ryan@dsl.state.us
Department of State Lands, Chapter 141, Division 102
OREGON ESSENTIAL INDIGENOUS ANADROMOUS SALMONID HABITAT

141-102-0000
Purpose

Pursuant to ORS 196.810(1)(b), these rules:

(1) Designate-Further define "essential indigenous anadromous salmonid habitat (ESH)" on maps that are made a part);

(2) Designate ESH in consultation with the Oregon Department of Fish and Wildlife (ODFW) and in consultation with other affected parties;

(23) Establish the process to amend the ESH designations as new information becomes available;

(4) Develop and implement a process for responding to requests to review the accuracy of an ESH designation and mapping; and

(35) Require an authorization from the Department for activities involving the fill or removal of any amount of material in ESH unless the activity is exempt.

Statutory/Other Authority: ORS 196.810
Statutes/Other Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925
History:
DSL 1-2010, f. 3-15-10, cert. ef. 4-1-10
DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08
DSL 1-2004, f. & cert. ef. 5-21-04
DSL 4-2001, f. & cert. ef. 4-18-01
DSL 8-1999, f. 3-9-99, cert. ef. 5-1-99
LB 4-1995, f. 12-13-95, cert. ef. 1-1-96

141-102-0010
Policy

(1) It is the policy of the State of Oregon to protect ESH.

(2) To achieve this policy, the Department shall:

(a) Consult with the Department of Fish and Wildlife (ODFW) concerning the status of Oregon's indigenous anadromous salmonid species;

(b) Identify ESH in consultation with ODFW and the other affected parties.
(c) Provide for public through rulemaking and comment. Recognize the high level of public interest in ESH by providing opportunities for public review and comment when there are proposed changes to ESH designations.

(d) Provide for tribal engagement and government to government consultation to all federally recognized Tribes in Oregon. Recognize the varied interests and unique connections Tribes have with salmonids and their habitat by providing opportunities for meaningful tribal engagement and government to government consultation.

(e) Promote awareness of ESH. Raising awareness is the best way to protect ESH. Coordinate with other natural resource agencies to promote awareness of ESH and ESH updates.

(f) Review all projects proposed in ESH pursuant to the standards set forth in the state's Removal-Fill Law (ORS 196.600 to 196.990) and rules (OAR 141-085).

Statutory/Other Authority: ORS 196.810
Statutes/Other Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925
History:
DSL 1-2010, f. 3-15-10, cert. ef. 4-1-10
DSL 1-2004, f. & cert. ef. 5-21-04
DSL 4-2001, f. & cert. ef. 4-18-01
DSL 8-1999, f. 3-9-99, cert. ef. 5-1-99
LB 4-1995, f. 12-13-95, cert. ef. 1-1-96

141-102-0020
Definitions

(1) "Essential" means those portions of a stream reach that fill all or part of the basic or indispensable spawning or rearing needs of indigenous anadromous salmonids and are those areas necessary to prevent the depletion of indigenous anadromous salmonids. Such areas include "spawning habitat" and "rearing habitat" as defined below under sections (3) and (4) of this rule (Oregon Fish Habitat Distribution Data Standard, Version 2.0, February 2011: http://www.oregon.gov/DAS/CIO/GEO/standards/docs/oregonfishhabitatdistributiodatastandardv2.pdf).

(2) "Indigenous anadromous salmonid" means chum, sockeye, Chinook and Coho Salmon, and steelhead and cutthroat trout, that are members of the family of Salmonidae and are listed as sensitive, threatened or endangered by a state or federal authority.

(3) "Spawning Habitat" includes areas where eggs are deposited and fertilized. For some species, including salmonids, this also includes areas where gravel emergence occurs and where at least some juvenile development occurs.
(4) "Rearing Habitat" includes areas outside primary spawning habitats where juvenile fish take up residence during some stage of juvenile development and use the area for feeding, shelter, and growth. Some migration also occurs as juvenile and adult fish move between the ocean and spawning grounds.

Statutory/Other Authority: ORS 196.810
Statutes/Other Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925
History:
DSL 1-2015, f. 2-10-15, cert. ef. 3-1-15
DSL 1-2010, f. 3-15-10, cert. ef. 4-1-10
DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08
DSL 1-2004, f. & cert. ef. 5-21-04
DSL 4-2001, f. & cert. ef. 4-18-01
DSL 8-1999, f. 3-9-99, cert. ef. 5-1-99
LB 4-1995, f. 12-13-95, cert. ef. 1-1-96

141-102-0030
Designation of Essential Salmon Habitat (ESH)

(1) Areas designated eligible for designation as ESH shall include the waters of this state as described in OAR 141-085, including streams and any adjacent off-channel rearing or high-flow refugia habitat with a permanent or seasonal surface water connection to the stream.

(2) The streams and stream segments designated as ESH are shown on maps that are incorporated by reference in this rule in the 2021 Essential Salmonid Habitat Map. The Department may modify ESH designations based on the best available information following the process in OAR 141-102-0040.

(3) The Department will make available detailed maps of designated ESH at cost and the maps are also available for downloading and viewing on the Department’s website (http://www.oregon.gov/dsl/PERMITS/Pages/esshabitat.aspx); physical maps will be made available upon request, at cost.

(4) The Department will conduct outreach to notify and engage in consultation with federally recognized Tribes in Oregon and conduct outreach with the affected public to promote awareness of ESH and ESH updates.

Statutory/Other Authority: ORS 196.810
Statutes/Other Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925
History:
DSL 1-2015, f. 2-10-15, cert. ef. 3-1-15
DSL 1-2010, f. 3-15-10, cert. ef. 4-1-10
DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08
DSL 1-2004, f. & cert. ef. 5-21-04
141-102-0040
Revisions to ESH

Revisions, additions to or deletions from the list and maps of ESH designations shall be made by amendment to these administrative rules according to the following procedure:

(1) Requests to change an ESH designation and mapping may be submitted to the Department at any time. The Department will submit requests to ODFW for consideration.

(2) Additions, modifications, and deletions to ESH accepted by ODFW may be adopted by the Department during the next annual update process, subject to input from interested parties received in accordance with section (5), and based on the best available information.

(3) Corrections in data entry and map alignment accepted by ODFW may be adopted by the Department outside of the annual update process. Adopted changes are considered effective but may not be reflected on ESH maps until the next annual map update.

(4) The Department will consult annually with ODFW on the accuracy of the ESH designations since the last update.

   (a) The Department will notify federally recognized Tribes within Oregon about revisions to ESH at least 60 days and provide an opportunity to consult with the Department before annual changes are adopted.

   (b) When advised by ODFW that new or higher quality data are available, the Department shall adopt the revised ESH designations, subject to input from interested parties received in accordance with section (5), and based on the extent best available information.

(5) The Department will provide opportunity for input from interested parties on proposed annual changes to ESH designations as provided in accordance with section (2) of designated habitat, this section before adopting a revised map.
(b) Revisions to ESH must be available for public review and comment for a minimum of 30 calendar days. The Department may extend the comment period at its discretion.

(c) Recommendations and comments regarding revisions to ESH designations must be submitted in writing to the Department, either electronically or by mail.

(6) If annual changes occur, final designations and an updated map will be adopted no later than February 1 of each year.

Statutory/Other Authority: ORS 196.810
Statutes/Other Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925
History:
DSL 1-2010, f. 3-451
5-10, cert. ef. 4-1-10
DSL 1-2004, f. & cert. ef. 5-21-04
DSL 4-2001, f. & cert. ef. 4-18-01
DSL 8-1999, f. 3-9-99, cert. ef. 5-1-99
LB 4-1995, f. 12-13-95, cert. ef. 1-1-96
March 17, 2021

Kaitlyn Wiggins
Rules & Records Coordinator
Oregon Department of State Lands
775 Summer St. NE, Suite 100
Salem, OR 97301-1279

Subj: Josephine County objects to Proposed Rule 141-102 – “Revisions to Essential Salmon Habitat Maps”

Dear Ms. Wiggins:

Josephine County, by and through its Board of Commissioners, objects to DSL’s proposed revisions of Essential Salmon Habitat (ESH) maps.

The current ESH designations have failed to protect the salmon population. Doubling down on a failed approach by expanding the ESH designations “upstream” to where water rarely flows will not reverse the situation. The proposed maps are not representative of routes across which most – if any – salmon actually travel. The salmon population in Southwest Oregon has declined considerably in recent years due not to a lack of upstream habitat, but apparently due to the federal government’s failure to adequately manage actual tributaries. Additionally, the Cole Rivers Fish Hatchery has been woefully mismanaged by the Army Corps of Engineers (ACOE). When Curry and Josephine Counties – in coordination with the Oregon Department of Fish and Wildlife – prevailed upon the ACOE to at least study the cause of the salmon decline, the Corps responded by taking no action.

It is inappropriate and premature to implement the revised ESH map before properly studying the most likely cause for the salmon decline. We have no doubt
that the overwhelming – though relatively silent – majority of Josephine County residents would support addressing the issue’s root cause instead of nibbling around the edges. Thus, unless and until the problems in the main tributaries and at the Cole Rivers Fish Hatchery get addressed, Josephine County objects to expanding ESH maps in Southwest Oregon.

Josephine County Board of Commissioners

Daniel E. DeYoung, Chair

Herman E. Baertschiger, Jr., Vice-Chair

Darin J. Fowler, Commissioner

cc: (via email)
Members of the Josephine County Legislative Delegation
Members of the Senate Committee on Energy and Environment
Members of the Senate Committee on Natural Resources and Wildfire Recovery
Members of the House Committee on Energy and Environment
Members of the House Committee on Agriculture and Natural Resources
Fort Vannoy Irrigation Dist.
P.O. Box 2316
Grants Pass, OR 97528

16. March, 2021

Oregon Division of State Lands
Rules Coordinator
775 Summer Street NE, Suite 100
Salem, Oregon 97301-1779

RE: Essential Salmon Habitat

To whom it may concern:

After careful review of the proposed changes, the Fort Vannoy Irrigation District has determined that a part of the District’s canal system has been identified as essential salmon habitat. The said canal, identified as Lathrop Creek in Josephine County, is a ditch constructed by the District in the 1920’s era. The District’s ditch is referred to as “Drain Ditch” by the district. How the name of Lathrop Creek, as shown on the DSL map, came to be is unknown.

The District has all supporting documents as to the construction of the ditch as well as all the recording covenants to affected properties. Including in these documents are recorded agreements to the maintenance of said ditch. The District has to, by agreement, maintain the said ditch for drainage in the winter and the conveyance of irrigation water in the summer. If this ditch is included in this rulemaking, the District could be found in violation of its agreements with multiple land owners and may create a liability for the District.

The said ditch has multiple pumping stations as well as seasonal diversions located along the course of the ditch. These improvements need to be maintained yearly and if included in this rulemaking would prevent these activities and cause harm to the District and its patrons.

The District is asking for the said ditch to be removed from the proposed rulemaking starting at the confluence of Fort Vannoy Creek to the end of its construction. This would ensure that the contractual responsibilities of the District could be met.

If the said ditch becomes part of this rulemaking, the District may have to seek other legal measures to ensure that it can continue to serve its patrons.

Thanking you for your consideration

Herman Baertschiger Jr
Fort Vannoy Irrigation District

CC:
Senator Art Robinson
Rep. Daune Stark
Rep. Lilly Morgan
Ron Yockim
March 4, 2021

via email: <rules@dsl.state.or.us>

Rules Coordinator
Department of State Lands
775 Summer Street NE, Suite 100
Salem, Oregon 07301-1279

Re: Revisions to Essential Salmon Habitat Maps

Dear Rules Coordinator:

We appreciate the opportunity to provide input on the Revisions to Essential Salmonid Habitat (ESH) maps.

Based on our review of the draft map, it appears to be correct and seems to have addressed some of the concerns with the previous iteration where stream segments with very productive spawning and rearing habitat (based on USFS) were not mapped as ESH. However, we focused on specific areas and not all of Oregon.

It’s been reported that advocates of motorized instream mining have asked that the ESH in the Briggs Creek watershed be reduced. We don’t agree that there should be any reduction of ESH in the Briggs Creek watershed.

Briggs Creek was once an exceptionally productive native salmon and steelhead stream. It’s still productive when considering most streams of its size in Oregon. In addition, streams in the Illinois River Basin are especially important because the Illinois is one of only two streams of its size in Oregon where there’s been no regular program of hatchery supplementation. In other words, Briggs Creek and all anadromous fish bearing streams in the basin are important and should be ESH.

We urge DSL to provide DEQ with the adopted revised ESH maps. This is important so DEQ can notify miners with NPDES permits for suction dredging of the newly designated ESH that their permit is no longer valid. We also urge DSL to notify known suction
dredgers that any motorized dredging in newly designated ESH, regardless of amount, violates DSL regulations.

Since the U.S. Forest Service surface mining regulations do not require miners to notify the agency of their mining activities unless the miners believe it might cause significant surface resource disturbance, the Oregon State Police are the primary enforcers of state law. This means that the OSP need to be informed of the adopted changes and have real time access to updated ESH maps. We expect that the 2021 ESH update will be enforced during the 2021 motorized dredging season.

Additionally, there’s concern that instream motorized mining—on streams in the Illinois Basin where there’s been heavy motorized suction dredging—has continued. Streams of special concern include Sucker Creek, Briggs Creek, Josephine Creek and its tributaries, including Canyon Creek, and Silver Creek. We urge that DSL and DEQ coordinate so that there’s at least monthly monitoring of these streams and the monitoring is coordinated with the Forest Service and BLM.

Additional comments

We support the Department’s efforts to ensure that there are consistent opportunities for the public and tribal governments to participate in the ESH designation process, as well as specifically requesting ESH designation reviews. We are concerned that the use of “affected parties” at least 3 times in the proposed language may not be as inclusive as possible. Is there a standard that a member of the public must meet to quality as an “affected party” as compared to “interested party”? DSL should consider using “interested parties” uniformly to ensure that the public’s ability to review and request ESH revisions is as transparent and inclusive as possible. The use of ‘affected parties’ in some language and “interested parties” elsewhere leads one to believe they mean different things when perhaps they do not.

DSL should publicly state how implementation of revised ESH designations will be conducted internally and coordinated with other state agencies and partners, including the BLM and Forest Service. DSL should provide a written statement regarding its process for coordinating with DEQ about the implementation of 2021 revised ESH with clear timelines and responsibilities.

DSL should state the date when new designations will likely go into effect.
There are numerous new ESH stream segments in the draft 2021 ESH map released by DSL where suction dredge mining is currently permitted and ongoing. The DSL and DEQ must state how they will coordinate to inform DSL and DEQ permit holders that their permit is no longer valid for newly designated ESH segments. As one example, Briggs Creek in Josephine County has been designated as ESH in the 2021 map. This creek has been heavily suction dredged in the past. DSL and DEQ must indicate how and when they will communicate with the public and notify permit holders about new ESH designations that now make those permits invalid.

In areas where unauthorized suction dredge mining may occur in 2021 within newly designated ESH, the DSL and DEQ must state how they will coordinate to monitor compliance. Unauthorized stream mining is a significant problem in the Illinois watershed for streams such as Sucker Creek where a lack of monitoring and enforcement by state and federal agencies has resulted in large-scale and repeated illegal placer mining.

Thank you again for the opportunity to provide input on the revised ESH map for the State of Oregon.

Sincerely,

Barbara Ullian
Grants Pass, Oregon 97527
barbaraullian@charter.net
March 3, 2021

Department of State Lands
Kaitlyn Wiggins
775 Summer St. NE, Suite 100
Salem, Oregon 97301


Dear Ms. Wiggins,

Thank you for the opportunity to provide public comments on the proposed Revisions to Essential Salmonid Habitat ("ESH") maps and designation process. These comments are submitted to Department of State Lands ("DSL") on behalf of the Northwest Environmental Defense Center ("NEDC") and the Native Fish Society ("NFS") (together “Commenters”).

NEDC is an independent, nonprofit environmental organization established in 1969 by a group of professors, law students, and attorney alumni at Lewis & Clark Law School. The organization’s members include citizens, attorneys, law students, and scientists. NEDC’s mission is to protect the environment and natural resources of the Pacific Northwest by providing legal support to individuals and grassroots organizations with environmental concerns, and by engaging in education, advocacy, and litigation independently and in conjunction with other environmental groups.

Guided by the best available science, NFS advocates for the recovery of wild, native fish and promotes the stewardship of the habitats that sustain us all. NFS advocates include anglers, conservationists, naturalists, outdoor enthusiasts, foodies & foragers, educators, scientists, policymakers, and traditionally underrepresented communities that all have an important role to play in the future of wild fish. Native Fish Society empowers everyday people to take action on behalf of fish, their home waters, and local communities. We forge lasting relationships to educate, inspire, and mobilize everyone committed to keeping fish and their homewaters forever wild.

Commenters appreciate DSL’s efforts to protect important salmonid habitat. Overall, we support the new ESH designations and revised designation process. However, we have several questions and concerns we believe DSL should address before the proposed rulemaking is finalized.

1. **DSL Must Ensure Robust Tribal Involvement in the ESH Designation Process.**
Commenters support DSL’s dedication to tribal involvement in the revised designation process. Tribal involvement in this process is important because alliances between tribes and the state “are critical in amplifying the voice and influence of the tribes.”\footnote{Syma A. Ebbin, \textit{Fish and chips: Cross-cutting issues and actors in a co-managed fishery regime in the Pacific Northwest}, 45 Policy Sciences 169, 183 (2012).} We suggest that DSL use the language “ensure” instead of “provide for” when addressing tribal engagement. The rule’s language should indicate that DSL will do its best to guarantee tribal involvement and the language “ensure” indicates a stronger commitment to this objective. DSL should also describe how it will provide transparency in the tribal involvement process. Transparency on these issues is important as it builds trust and “[t]rust facilitates cooperation.”\footnote{\textit{Id.} at 181.}

In addition, DSL should further increase inclusion by ensuring involvement of non-federally recognized tribes. The National Environmental Justice Advisory Council consultation guide addresses non-federally recognized tribes. It states that “[a]gencies should seek to identify such groups and to include them in the decision-making processes.”\footnote{National Environmental Justice Advisory Council: Indigenous People Subcommittee, U.S. Environmental Protection Agency, \textit{Guide on Consultation and Collaboration with Indian Tribal Governments and the Public Participation of Indigenous Groups and Tribal Members in Environmental Decision Making} 10 (2000).} Although the guide refers to federal agencies, DSL should apply this principle as well.

2. DSL Should Provide Additional Information Regarding ESH Education Efforts.

The proposed rule states that one of the rule’s goals is to: “(e) Promote awareness of ESH. Raising awareness is the best way to protect ESH. Coordinate with other natural resource agencies to promote awareness of ESH and ESH updates.”\footnote{Notice of Proposed Rulemaking at 5.} Commenters support this statement wholeheartedly, as awareness and community outreach are important aspects of ESH protection. We encourage DSL to provide more information as to how awareness will be promoted and where educational practices will be focused. For example, DSL could provide more direct outreach to particular groups that are affected by ESH designations, such as local prospector organizations (Gold Prospectors Association of America has two chapters in Oregon). DSL should aim to collect and share information on the types of outreach conducted with impacted groups, and use that information to further develop educational strategies going forward.

Commenters also urge DSL to provide additional information regarding current educational measures in place across Oregon. This should include any information regarding the efficacy of these measures and where can they be improved or optimized, as well as anticipated funding to be allocated to educational purposes. This background information would allow the public to assess the extent to which the proposed rule should incorporate additional, specific measures to ensure the protection of ESH through educational outreach.
3. DSL Should Take Additional Steps to Ensure Adequate Enforcement of ESH Regulations.

The proposed rule states that as the designations of various streams change, DEQ must notify each NPDES permit holder when that permit assignment is no longer valid to prevent motorized suction dredge mining from occurring in protected ESH areas. Commenters suggest that the rule incorporate an additional process requiring permit holders to acknowledge they received notification of such a change. Additionally, DEQ should be required to notify known suction dredgers that any level of suction dredge activity would violate ESH area regulations.

It is also important that the Oregon State Police, as the primary enforcement of state law, be informed of ESH map changes in a timely manner. DSL should provide information as to how it will collaborate with OSP and other relevant agencies (such as U.S. Forest Service and Oregon Department of Fish Wildlife) to ensure the protection of ESH. One example of such collaboration could be to provide OSP access to real-time updated ESH maps.

4. The Rule Language Should be Modified to Ensure Participation by All Necessary Parties.

In the proposed rule, DSL uses the term “affected” to identify the parties that will be consulted when designating ESH, and when describing outreach targets. This language is too narrow to meet the rule’s objectives. DSL should instead use the term “interested,” to be more inclusive and ensure participation of all necessary parties. This uniform change would give all interested members of the public the ability to review and request revisions to the ESH maps to ensure the maps are accurate and effective in protecting salmonids.

Thank you for considering these comments and for your commitment to the protection of ESH. Please contact us with any questions or for further discussion on any of the points above.

Sincerely,

Claire Deuter
Lydia Dexter
Julian Kunik

NEDC Student Volunteers

Jake Crawford
NFS River Steward

Kirk Blaine
NFS Southern Oregon Regional Coordinator
March 2, 2021

Kaitlyn Wiggins
Department of State Lands
775 Summer Street NE, Suite 100
Salem, OR 97301

VIA EMAIL: rules@dsl.state.or.us

Re: Comments on Updates to Division 141 regarding Essential Salmonid Habitat and Associated ESH 2021 Map

Dear Ms. Wiggins:

Thank you for the opportunity to comment on the proposed updates to the Division 141 rules regarding Essential Salmonid Habitat (ESH) designations. While the Oregon Farm Bureau (“OFB”) and the Oregon Water Resources Congress (“OWRC”) were both members of the Rules Advisory Committee (RAC) charged with advising the Oregon Department of State Lands (Department) on the development of these rule amendments, we provided several comments to the Department as part of the rulemaking process which were not adopted, and which we believe are essential to the fair administration of these rule changes. We are opposed to the Department moving to annual updates and are not supportive of the rule changes as proposed.

By way of background, OFB is the state’s largest general agriculture organization, with nearly 7,000 member-families professionally engaged in the industry. OFB’s primary goal is to promote the economic and social interests of its members in the policymaking arena. OWRC is a nonprofit association representing irrigation districts and other agricultural water suppliers across Oregon, delivering water to 1/3 of all irrigated land in the state.

The changes to the Essential Salmonid Habitat rules were initiated in part due to the passage of HB 2437, which created the agricultural channel maintenance program. HB 2437 directed the Department to come up with a way to allow landowners to challenge an ESH designation if they believed it was erroneously made, as it could disqualify a landowner from the program. As such, we were shocked when the Department used this program as a backdrop for eroding landowner input into the program and politicizing the ESH designation process.
As we stated throughout the Rules Advisory Committee process, people should only be allowed to request removals or additions to ESH for their own property or (for districts) for property within the district’s boundaries. To allow otherwise will create a strong incentive to politicize this process and allow entities to do mass petitions for additional ESH designations. If the agency decides to allow non-owner/district entities to petition, then there must be some mechanism for providing landowners and districts with direct, individual notice and opportunity to respond before any waterways on their property are designated.

We also strongly oppose moving to annual updates. Annual updates are going to create substantial confusion for permits or authorizations that run on five year cycles. Despite raising this issue repeatedly as part of the rulemaking, DSL and ODFW have failed to address this concern. It is essential that once our members obtain a permit or authorization, its terms and conditions are honored and valid for the life of the authorization. It is fundamentally unfair and sets landowners up for failure if the state allows the maps to change midstream through a permitting cycle. At the very least, when there is a permit or authorization issued, it should utilize the ESH map that existed at the time the authorization was granted, regardless of future map updates that occur during the life of the authorization or permit.

We are not supportive of annual updates of the map based on existing processes that seem to lead to reoccurring errors and ensuing difficulties of getting ESH designations removed. Annual updates are going to create more confusion if there are erroneous designations that remove existing permit exemptions or otherwise alter conditions of removal/fill permits or authorizations. Irrigation districts and farmers must be able to conduct regular operations and maintenance of delivery systems and have clarity when a permit is needed or not needed. Inability to make timely repairs can lead to catastrophic infrastructure failure, resulting in water supply delays to district farmers, flooding, and property damage. Annual updates without a better process for addressing errors and notifying impacted districts/landowners of designations is only going to lead to further confusion and legal battle.

Finally, ESH should not be designated on man-made water delivery systems. ESH designations should not include water delivery systems (such as canals, ditches, and pipelines) beyond screened diversions that keep fish from entering the system. Water delivery infrastructure should not be mapped as ESH as these physical structures are not capable of being fish habitat and being designated as such would prevent routine maintaince. The Department needs to improve how it maps ESH in relation to water delivery infrastructure and ensure proper notification to impacted entities before more frequent updates occur. Further, ESH should only be designated on perennial streams, not ephemeral or intermittent streams. Ephemeral or intermittent streams provide only transient habitat and habitat values vary widely year to year – it is not appropriate to restrict landowners use of their land for features that may or may not qualify as habitat during any given time of year or any given year or ever. We request that DSL and ODFW update the 2021 proposed map to remove all district infrastructure and intermittent and ephemeral streams from designation, and that DSL ensure that these features do not get designated again in future updates. We are not opposed to appropriate protections for fish and fish habitat, however; we are not supportive of unwarranted more frequent designations causing further burden and uncertainty to our members.
Thank you for the opportunity to submit comments, and please contact us if you have any questions.

Sincerely,

Mary Anne Cooper  
Vice President of Public Policy  
Oregon Farm Bureau  
maryanne@oregonfb.org

April Snell  
Executive Director  
Oregon Water Resources Congress  
aprils@owrc.org
March 3, 2021

Rules Coordinator
Department of State Lands
775 Summer Street NE, Suite 100
Salem, Oregon 97301-1279

Sent via email : <rules@dsl.state.or.us>

Re: Update to Essential Salmon Habitat Maps

Dear DSL Rules Coordinator:

I am writing on behalf of the Kalmiopsis Audubon Society, based in Curry County, Oregon. Our organization has 400 members who are concerned about conserving habitats for birds, fish, and wildlife. Some of our members are anglers, and all of our members appreciate the critical role of clean water and intact habitat for salmonids and other aquatic life. We commend you for your efforts to update and improve the mapping of Essential Salmon Habitat (ESH), and we appreciate the opportunity to comment in this public process.

We strongly support all the stream segments extended and added to the ESH map, and we can especially vouch for the importance of the new reaches added on Oregon’s South Coast. They reflect the crucial importance of tributary streams and some direct coastal streams as habitat for steelhead and threatened coho as well as other salmonids.

In particular we support inclusion of the following reaches:

- addition to Langlois Creek
- All added tributaries to Elk River, which include streams with important restoration projects
- All added tributaries to Hubbard Creek and the North Fork Hubbard Creek
- All added tributaries to Brush Creek
- All added tributaries to Mussel Creek
- All added tributaries Euchre Creek
- All added tributaries Cedar Creek
- Greggs Creek
- All added tributaries Lobster Creek
• All added tributaries the lower Rogue, including Ranch Creek, Krambeal Creek, Kimball Creek, Saunders Creek, Indian Creek, Quosatna Creek, Tom Fry Creek, Shasta Costa Creek, Waters Creek, Two Mile Creek, Billy’s Creek, East Creek, Blossom Bar Creek, W Fk. Mule Creek, and additional tributaries upstream
• All added tributaries to the Illinois River, including Lawson Creek, Horse Sign Creek, N. Fk Indigo Creek, Silver Creek, Collier Creek, and Briggs Creek
• All added tributaries to Hunter Creek
• All added tributaries to the Pistol River, including North and East Fork
• All added tributaries to the Chetco, including Fall Creek, Tincup Creek, Boulder Creek, Black Box Creek, Eagle Creek and its Mineral Hill Fork, Nook Creek, Emily Creek, North Fork Chetco
• All added tributaries to the Winchuck River

We urge you to develop a plan to implement the newly designated ESH reaches, including communication and planning for enforcement, especially in areas where they may be conflicts. This will be especially important for tributaries to the Illinois River, where there is a record of motorized instream mining. The Illinois is a National Wild and Scenic River, and its wild salmon and steelhead runs are especially valuable in our region.

We urge you to share the updated maps with all other state agencies with purview over activities that may not occur in Essential Salmon Habitat, such as the Department of Environmental Quality (DEQ) and the Oregon State Police (OSP). Protecting ESH is vital for our region’s salmon, and so we will appreciate your efforts to make the new map work well and in tandem with other agencies to better implement the protective laws that tier to this mapping.

Protecting ESH will become especially important as our streams are increasingly impacted by climate change impacts.

Thank you for considering our view.

Sincerely,

Ann Vileisis
President
Kalmiopsis Audubon Society
March 4, 2021

VIA EMAIL
Rules Coordinator
775 Summer Street NE, Suite 100
Salem, Oregon 97301-1279
rules@dsl.state.or.us

RE: SUBMISSION OF PUBLIC COMMENT ON THE REVISIONS TO THE OREGON ESSENTIAL INDIGENOUS ANADROMOUS SALMONID HABITAT RULES

The Santiam Water Control District (“SWCD”) is an Oregon water control district operating under the power and authority granted to water control districts by Oregon Revised Statutes, Chapter 553. SWCD is controlled by a board of directors comprised of local farmers. SWCD provides irrigation water to agricultural patrons in the Willamette Basin and along the North Santiam River. SWCD holds water rights to irrigate over 17,000 acres. The SWCD water conveyance facilities (“SWCD Facilities”) run approximately 118 miles and consist primarily of open canals primarily located within rights-of-way across the agricultural lands of district members.

Oregon Department of State Lands (“DSL”) has proposed revisions to the GIS map of essential salmonid habitat (“ESH”) areas in Oregon. DSL has also proposed revisions to the rule governing the process by which future ESH maps are updated. SWCD is concerned with the impact of the proposed rulemaking and submits the following comments.

The application of ESH designations to artificial water conveyance facilities is inappropriate for several reasons. Oregon agricultural water districts typically cannot deliver agricultural irrigation water diverted under district water rights over full season fish habitat because districts lack legal authority, under both contract and under state law, to maintain minimum flow rates or minimum water elevations in district conveyance facilities. District members are typically entitled to take their full duty, without regard for canal levels. In the alternative, members may choose to not to place a district water right to beneficial use on member property altogether. In the event of non-use, the district is then obligated to either forego diversion or transfer the impacted portion of the district right to a different place of use. Every scenario, full consumptive use, non-diversion, or transfer, will have a material negative impact on the amount of water in an ESH-designated district facility. When an ESH-designated irrigation water conveyance ditch is dry, a district in compliance with state water law could face liability for harm to indigenous anadromous salmonids. Conversely, if a district declined to honor a valid member request for non-use or transfer, the district would then violate state water law and likely terms of the contract with district members. Listing of artificial agricultural irrigation water conveyance facilities limits district capacity to operate and maintain those facilities. Liability for unmaintained facilities arises when districts fail to deliver water and or convey floodwaters away from private property. Finally, subjecting artificial facilities used to convey agricultural irrigation water to ESH designation is inappropriate because the entire system, or segments of the system, often include fish screens and irrigation diversion dam barriers.

The Oregon Department of Environmental Quality relies upon the National Hydrography Dataset (“NHD”) framework for water quality assessments. In order to assist DSL in differentiating artificial conveyance facilities from the ESH designation process, SWCD recommends that DSL transition the ESH mapping hydrologic framework from the current system to the NHD framework. The NHD framework delineates natural and artificial waterbodies and would facilitate removal of artificial water conveyance systems.
2. Comments on the Proposed Revision to OAR 141-102-0000.

DSL proposes revising OAR 141-102-0000(4) to state that DSL will “[d]evelop and implement a process for responding to requests to review the accuracy of an ESH designation and mapping.” SWCD appreciates that DSL is implementing a process to review accuracy of ESH designation and mapping. However, the process should restrict requests for removal or addition of ESH designation either to the owner of the subject land or to the special districts either serving or using the subject land. Granting infinite standing by extending any party a right-of-review would invite mass petitions by special interests. Infinite standing to request review could harm landowners and districts while overly burdening DSL and Oregon Department of Fish and Wildlife. In the alternative, if DSL grants infinite standing to request review, then a robust notice mechanism must be implemented to notify landowners and districts of the request for review and the opportunity to respond prior to the designation of artificial conveyance facilities. Currently direct notice is not provided when district conveyance facilities become subject to ESH designation.

3. Comments on the Proposed Revision to OAR 141-102-0040.

DSL proposes updating ESH designations by February 1st annually. The District is concerned that annual updates of the ESH map may cause confusion and potential harm. It is essential for a district to be able to conduct regular operations and maintenance of delivery systems and have clarity when a permit is needed or not needed. Fluctuating ESH designations will create uncertainty and delay in permitting requirements. Inability to make timely repairs can lead to infrastructure failure, resulting in water supply delays to district farmers, flooding, and property damage. Even the exiting ESH mapping process has led to reoccurring errors where certain waterways are removed and but then reappear with each map update. Annual updates will create more confusion if erroneous designations remove existing permit exemptions or alter conditions of removal/fill permits. Annual updates without a better process for addressing errors and notifying impacted districts and landowners of new ESH designations will lead to uncertainty, increased damages, and legal claims surrounding administrative chaos.

SWCD understands the potential liability and regulatory consequences of DSL designation on District Facilities. SWCD requests that DSL work with water districts to improve the ESH designation process and provide direct notice when changing designations impact district facilities. SWCD appreciates the opportunity to comment and looks forward to working with DSL to resolve these concerns.
March 3, 2021

VIA EMAIL
Rules Coordinator
775 Summer Street NE, Suite 100
Salem, Oregon 97301-1279
rules@dsl.state.or.us

RE: SUBMISSION OF PUBLIC COMMENT ON THE REVISIONS TO THE OREGON ESSENTIAL INDIGENOUS ANADROMOUS SALMONID HABITAT RULES

The Eagle Point Irrigation District (“District”) is an Oregon irrigation district formed under Oregon Revised Statutes Chapter 545. The District provides irrigation water to 8,260 acres of land and 540 patrons within the Rogue Valley. The District boundaries stretch from Butte Falls to Antelope Creek and to the Rogue River. The District diverts water from Big Butte Creek and delivers agricultural irrigation water via an 18-mile main canal and 165 miles of lateral ditches (“District Facilities”).

Oregon Department of State Lands (“DSL”) has proposed revisions to the GIS map of essential salmonid habitat (“ESH”) areas in Oregon. DSL has also proposed revisions to the rule governing the process by which future ESH maps are updated. The District is concerned with the impact of the proposed rulemaking and submits the following comments.

1. The Existing ESH Designation Process.

The application of ESH designations to artificial water conveyance facilities is inappropriate for several reasons. An agricultural water district’s rights and management obligations associated with the water rights served by those facilities often cannot deliver full season fish habitat because districts lack legal authority, under both contract and under state law, to impose a specified minimum flow rate or minimum water level in their conveyance facilities. Agricultural water district facilities are also inappropriate for ESH designations because often the entire system or segments of the system include barriers such as fish screens and irrigation diversion dams.
2. **Proposed Revision to OAR 141-102-0000(4).**

DSL proposes revising OAR 141-102-0000(4) to state that DSL will “[d]evelop and implement a process for responding to requests to review the accuracy of an ESH designation and mapping.” The District appreciates that DSL is implementing a process to review accuracy of ESH designation and mapping. However, the process should restrict requests for removal or addition of ESH designation to the owner of the subject land and the special districts either serving or using the subject land. Granting any party a right-of-review would invite mass petitions by special interests. Infinite standing to request review could harm landowners and districts while overly burdening DSL and Oregon Department of Fish and Wildlife. In the alternative, if DSL grants infinite standing to request review, then a robust notice mechanism must be implemented to make landowners and districts aware of the request for review and the opportunity to respond before any waterways on their property and conveyance facilities are designated. Currently no direct notice is provided when a district conveyance system is designated ESH.

3. **Proposed Revision to OAR 141-102-0040.**

DSL proposes updating ESH designations by February 1\(^{st}\) annually. The District is concerned that annual updates of the ESH map may cause confusion and potential harm. As a district manager, it is essential to be able to conduct regular operations and maintenance of delivery systems and have clarity when a permit is needed or not needed. Fluctuating ESH designations will create uncertainty and delay in District permitting requirements. Inability to make timely repairs can lead to catastrophic infrastructure failure, resulting in water supply delays to district farmers, flooding, and property damage. Even the exiting ESH mapping process has led to reoccurring errors where certain waterways are removed and but then reappear with each map update. Annual updates will also create more confusion if erroneous designations remove existing permit exemptions or alter conditions of removal/fill permits. Annual updates without a better process for addressing errors and notifying impacted districts and landowners of new ESH designations will lead to uncertainty, increased damages, and legal claims surrounding administrative chaos.
The District understands the potential liability and regulatory consequences of DSL designation on District Facilities. The District requests that DSL work with water districts to improve the ESH designation process and provide direct notice when changing designations impact district facilities.

The District appreciates the opportunity to comment and looks forward to working with DSL to resolve these concerns.

Sincerely,

David Ford,
District Manager,
Eagle Point Irrigation District
To whom it may concern,

Farmers Irrigation District, Middle Fork Irrigation District, and East Fork Irrigation District are submitting joint comments based on our shared knowledge of and interest in the Hood River Basin. The districts request a second review of the proposed expansion of ESH habitat up the south and north forks of Green Point Creek in the Hood River Basin. We believe there is a natural passage barrier that would preclude anadromous access to these proposed ESH areas.

We also request a second review of the proposed expansion of ESH habitat from Clear Branch into the Clear Branch Dam spillway pools. We don't believe these pools meet the definition of ESH as spawning and/or rearing habitat. The spillway pools are man-made infrastructure necessary for safe dam operations. As Middle Fork Irrigation District works with state and federal agencies on dam improvements, changes to the downstream dam interface and these man-made pools are anticipated. Mapping them as ESH habitat is not appropriate and could be detrimental to planned improvements. We request that ESH designation not be expanded beyond the 2015 ESH map/designation (~200 feet downstream of the dam).

The districts support the proposed map changes that correct/remove inaccurate ESH designations in the Hood River Basin, including the removal of Ditch and Pine creeks, the removal of Rogers Creek south of Red Hill Road, and the removal of the upper section of Evans Creek.

With regards to the process for more frequent updates to the ESH designations/maps, the districts commend the online map format of existing and proposed designations as a very user-friendly and informative tool. We request that future maps include labels for more smaller streams and/or roads to help users orient themselves to specific waterways and improve the ease of public review.

The districts have appreciated the proactive and extensive notification of the proposed ESH changes through multiple entities and from multiple directions. This level of notification is critical to ensure organizations and
individuals with interest in or who are impacted by the ESH designations are aware of proposed or finalized changes. We hope and request that future notification will be equally as extensive.

Along those lines, the districts note that the proposed rules state that “affected parties” will be consulted, but does not define who those affected parties are or how they will be determined. While we would certainly consider our districts to be affected parties within the Hood River Basin, we also believe there are numerous other local governments, special districts, non-profits, businesses and individuals that are likely to be affected by current and/or future proposed designations. It is critical, both for sound ESH designations and for proper on-the-ground implementation, for this process to engage with all affected parties. Local agency representatives will often know many of the local entities, but we would also suggest reaching out to soil & water conservation districts, watershed councils, industry groups, irrigation districts, county and city governments, and restoration groups specific to each basin, as likely affected parties themselves, but also as good conduits to other local affected parties.

Lastly, as can be seen in the first two paragraphs of this letter, the districts note the importance of local knowledge of the Basin and its specific waterways to ensuring accurate maps and designations. We hope that input from locally knowledgeable individuals and organizations will be weighted heavily in future proposed and finalized designations.

Thank you,

Les Perkins
Manager
Farmers Irrigation District

Craig DeHart
Manager
Middle Fork Irrigation District

John Buckley
Manager
East Fork Irrigation District
March 2, 2021

Department of State Lands
Rules Division
775 Summer Street NE, Suite 100
Salem, Oregon  97301

Re: 2021 Essential Salmonid Habitat Expansion

Thank you for allowing Coos-Curry County Farm Bureau (CCFB) to provide comments regarding the proposed addition of 1,700 stream miles to Essential Salmonid Habitat (ESH). CCFB does not believe the Department of State Land’s (DSL) addition of 1,700 stream miles is essential for salmonids. Our understanding is the definition of essential is “absolutely necessary or extremely important.” We understand that there already are 20,600 stream miles designated as ESH. From our review of the ESH map for our area, part of the ESH expansion affects Coos and Curry Counties. From discussion with our members and other landowners, it is clear the ESH expansion in our Counties was done without any on site observations. We know that since property owners we consulted did not authorize any Oregon Department of Fish and Wildlife (ODFW) personnel to access their property.

The expansion appears to include intermittent streams. CCFB fails to see how ODFW can include an intermittent stream as essential. Many of our coastal designated “intermittent” streams do not provide spawning nor rearing habitat. The designation of a stream as ESH restricts landowner’s ability to maintain their property. As landowners, we should be allowed to request removal of the ESH designation on our property. Non-landowners, who have no historic background or on site view, should not be allowed to interfere with a request by a landowner to remove a stream from an ESH designation.

If DSL/ODFW decides to allow non-landowners to petition, then the landowners need a way to respond before any waterway/streams on their property are designated ESH. For example, if a landowner obtains a permit to do maintenance, any subsequent designation should not preclude the landowner from performing the permitted work.

Coos-Curry County Farm Bureau does not believe annual updates to ESH are necessary. This will create considerable confusion for farmers, ranchers, and timber land owners. Any need to designate more stream miles as ESH needs to be taken with careful consideration.

Respectfully,

Ryan McCarthy, President
February 25, 2021

Sent via email: <rules@dsl.state.or.us>

Rules Coordinator
775 Summer Street NE, Suite 100
Salem, Oregon 97301-1279

Department of State Lands : Submit Rulemaking Comment : Laws & Rules : State of Oregon

RE: Revisions to Essential Salmon Habitat Maps

Dear Rules Coordinator,

Thank you for the opportunity to provide public comments on the Revisions to Essential Salmonid Habitat ("ESH") maps. We concur with the draft ESH designations except for the need to extend ESH on upper Sucker Creek for one mile upstream of its confluence with Grizzly Gulch to the Siskiyou Wilderness Boundary (see attached form and supporting photos). Please inform us when the ESH updates are officially adopted.

Assertions by suction dredgers that ESH designations for Briggs Creek and its tributaries need to be reduced are speculative and have no scientific basis. The Forest Service and ODFW have conducted numerous fish surveys on Briggs Creek and its tributaries that document steelhead spawning and rearing. Richard Nawa (KS Wild) has observed and photographed steelhead redds in Briggs Creek (photo attached).

We expect DSL to provide DEQ with adopted ESH maps so that DEQ can notify suction dredgers with NPDES permits for newly designated ESH that the permit is no longer valid. We also urge DSL to notify known suction dredgers that any motorized dredging in newly designated ESH, regardless of amount, would violate DSL regulations. Since the Oregon State Police are the primary enforcers of state law, the OSP need to be informed of the adopted changes and have real time access to updated ESH maps. We expect that the 2021 ESH update will be enforced during the 2021 motorized dredging season.
We are particularly concerned about ongoing instream motorized mining on Illinois Basin streams with heavy historic motorized suction dredging such as Sucker Creek, Briggs Creek, Canyon Creek and Silver Creek. We recommend that DSL and DEQ coordinate to have at least monthly monitoring of these streams and coordinate monitoring with the Forest Service and BLM. It is unreasonable to expect the public to monitor for possible infractions.

**Purpose and Policy Proposed Language**

- **“Affected parties”** We support the Department’s efforts to ensure that there are consistent opportunities for the public and tribal governments to participate in the ESH designation process, as well as specifically requesting ESH designation reviews. We are concerned that the use of “affected parties” at least 3 times in the proposed language may not be as inclusive as possible. Is there a standard that a member of the public must meet to qualify as an “affected party” as compared to “interested party”? DSL should consider using “interested parties” uniformly to ensure that the public’s ability to review and request ESH revisions is as transparent and inclusive as possible. The use of ‘affected parties’ in some language and “interested parties” elsewhere leads one to believe they mean different things when perhaps they do not.

**ESH Designations, Map Revisions, and Compliance with Suction Dredge Mining**

- **Coordination with DEQ:** In considering the process for updating and revising ESH designations, DSL should publicly state how implementation of revised ESH designations will be conducted internally and coordinated with other state agencies and partners, including the BLM and Forest Service. DSL should provide a written statement regarding its process for coordinating with DEQ about the implementation of 2021 revised ESH with clear timelines and responsibilities.

- **Effective date of 2021 revisions to ESH:** DSL should state the date when new designations will likely go into effect.

- **Notification to invalid permit holders:** There are numerous new ESH stream segments in the draft 2021 ESH map released by DSL where suction dredge mining is currently permitted and ongoing. The DSL and DEQ must state how they will coordinate to inform DSL and DEQ permit holders that their permit is no longer valid for newly designated ESH segments. As one example, Briggs Creek in Josephine County has been designated as ESH in the 2021 map. This creek has been heavily suction dredged in the past. DSL and DEQ must indicate how and when they will communicate with the public and notify permit holders about new ESH designations that now make those permits invalid.

- **Compliance monitoring:** In areas where unauthorized suction dredge mining may occur in 2021 within newly designated ESH, the DSL and DEQ must state how they will coordinate to monitor compliance. Unauthorized stream mining is a significant problem in the Illinois watershed for streams such as Sucker Creek where a lack of monitoring and enforcement by
state and federal agencies has resulted in large-scale and repeated illegal placer mining (see Photo 1 below).

Photo 1. Unauthorized placer mining in Sucker Creek active channel created a large pit in fall 2018. The stream has subsequently filled the pit with fine gravel and sand. About 100 ft of stream has been irreparably damaged. This reach of Sucker Creek has been illegally mined repeatedly over the past ten years. UTM E:460548; N:4662643

We wish to be informed of any changes or delays to implementation of 2021 ESH mapping. Thank you for the opportunity to provide public comment on this process.

Sincerely,

Richard K. Nawa
Staff Ecologist
Klamath Siskiyou Wildlands Center
P.O. Box 654
Selma, OR 97538
rich@kswild.org
Robyn Janssen, Director
Rogue Riverkeeper
Ashland, Oregon
<robyn@rogueriverkeeper.org>

Attached: ESH Review Form Request for upper Sucker Creek; photos of Sucker Creek; mapped locations of Sucker Creek photos and photo of steelhead redds in Briggs Creek.
February 17, 2021
Oregon Department of State Lands
775 Summer St. NE, Suite 100
Salem, OR 97301-1279

To Whom it May Concern,

Thank you for the opportunity to comment on proposed updates to the state’s Essential Salmonid Habitat (ESH) database and maps. The City of Portland Bureau of Environmental Services manages Portland, Oregon’s wastewater and storm water infrastructure to protect public health and the environment, leading the City in preserving and restoring the health of Portland’s watersheds. As a city bureau that takes great pride in restoring and maintaining the health of our watersheds, we have a team of biologists that regularly monitor fish populations throughout Portland. This team electrofishes streams of all sizes; from drainages that flow intermittently, to streams that support all life stages of our local Pacific salmon species, to the great migratory pathway through town – the Willamette River mainstem. Over the last ten years, we have documented the presence of salmonids in reaches of streams that had rarely, if ever, been sampled before. I would like to provide information to inform the updates to the ESH that you are currently undertaking.

1. Lower Columbia Slough. The entire 8.5 miles of the Columbia Slough was recently designated as critical habitat for the lower Columbia River coho salmon; therefore, it should be included in the state’s ESH database as such. Our field team regularly samples juvenile chinook and coho salmon at a site located at the Multnomah County Drainage District levee that separates the lower from the middle Columbia Slough basins. We have also sampled juvenile coho salmon and observed adult steelhead trout using the habitat as slack water, off-channel Willamette River habitat. Geographic coordinates of the upstream end of the lower Columbia Slough where we find salmon are 45.583899, -122.648025.

2. Fanno Creek. A sizeable portion of Fanno Creek is designated ESH; however, based on the documented presence of coastal cutthroat trout (CCT) in reaches not yet mapped as ESH we request that the upstream extent of ESH in the Fanno Creek mainstem is extended up to 45.487457, -122.727669. Additionally, we have documented CCT presence at in Ivey Creek at 45.489245, -122.719702, and in Sylvan Creek all the way up to 45.500143, -122.743502.

3. Saltzman Creek. As there is no designation of ESH in Saltzman Creek, we would like to see this cold-water habitat added to the ESH database. Coastal cutthroat trout have been documented in Saltzman Creek at a monitoring site located at 45.556746, -122.751347.
Coastal cutthroat trout, Saltzman Creek, June 2014.

Again, thank you for the opportunity to add information to the Oregon Essential Salmonid Habitat database. Please do not hesitate to reach out for more information, or with any questions.

Sincerely,

Melissa Brown, CFP
Environmental Specialist
(she/her)
Cell: 503-823-5482
Melissa.Brown@portlandoregon.gov
www.portlandoregon.gov/bes
17 February 2021

ATTN: Kaitlyn Wiggins, Rules Coordinator
Department of State Lands
775 Summer Street NE, Suite 100
Salem, OR 97301-1279

RE: Public Comment on Proposed Rulemaking OAR 141-102 Revision of ESH Maps

Dear Ms Wiggins,

Thank you for the opportunity to review and comment on rules changes and updated map proposals under OAR 141-102. As farmers & ranchers, landowners, and residents helping to manage landscapes to enhance salmonid habitat in our region, we support efforts to accurately identify and characterize essential habitat on a reach-by-reach basis. Local knowledge is often the most accurate, and as DSL considers adding or removing waterways and reaches, it is important that affected landowners and districts be notified individually and directly, with ample opportunity to respond to proposed designation changes.

During recent review of the existing and proposed ESH maps, I identified three water bodies in our area listed as anadromous habitat that are separated from the Siletz Mainstem, at the confluence, by waterfalls too high to permit fish passage, even during seasonal mean high water:

Dewey Creek, Stream ID# 1239386447207, Reference ID# 53,050
Miller Creek, Stream ID# 1239594447223, Reference ID# 53,013
Tangerman Creek, Stream ID# 1239058447297, Reference ID# 51,507

If *Oncorhynchus mykiss* exist in those streams, and I’m not aware that they do, they are effectively landlocked and resident.

Accurate inventory of essential habitat helps the State and local partners prioritize those sites where habitat conservation, restoration, and enhancement activities are likely to make the most of scarce resources available for such purposes. If Gibson Farms can help provide survey access, or other assistance, to ODFW, or another responsible agency, please feel welcome to reach out.

Sincerely,

--Alan Fujishin
Co-Manager, Gibson Farms, Siletz