



OAR 141-102 OREGON ESSENTIAL INDIGENOUS SALMONID HABITAT RULEMAKING RULEMAKING ADVISORY COMMITTEE (RAC)

SEPTEMBER 22, 2020 MEETING SUMMARY

Overview

The OAR 141-102 Rulemaking Advisory Committee was convened by the Oregon Department of State Lands (DSL or Department) on September 22, 2020 via Zoom. The RAC was convened to provide input on proposed amendments to the administrative rules governing revisions, additions to or deletions of GIS maps of Essential Indigenous Salmonid Habitat in Oregon.

RAC Members and Attendance

Present?	Name	Affiliation
Yes	Joy Vaughan	Oregon Department of Fish & Wildlife (ODFW)
Yes (both)	Michael Powers Alternate: Tyler Manitsas	Oregon Department of Agriculture (ODA)
No	Jessica Dorsey	League of Oregon Cities
Yes	Lauren Smith	Association of Oregon Counties
Yes	Mary Anne Cooper	Oregon Farm Bureau
Yes	April Snell	Oregon Water Resources Congress
Yes (Robyn)	Stacey Detwiler Alternate: Robyn Janssen	Rogue Riverkeepers
Yes	Kimberly Priestly	WaterWatch of Oregon
Yes	Helena Linnell	Coquille Indian Tribe
Yes	James (Jim) Capurso	U.S. Forest Service
Yes	Jake Crawford	Fly Water Travel
Yes (Scott)	Scott Lepman Contact: Alexandra Keister	Scott Lepman Company – Real Estate Appraisal
Yes	Troy Brandt	Oregon Chapter, American Fisheries Society
Yes (both)	Tom Quintal Alternate: Mike Hunter	Mining Industry

Present?	Name	Affiliation
Yes (joined late)	Gary James	Confederated Tribes of the Umatilla Indian Reservation
No	Jason Robinson	Cow Creek Band of Umpqua Indians
Staff/Advisors		
Yes (beginning)	Bill Ryan	DSL, Deputy Director
Yes	Kaitlyn Wiggins	DSL, Rules Coordinator
Yes	Pete Ryan	DSL, Project Manager
Yes (joined late)	Dana Hicks	DSL, Planning & Policy Manager
No	Andrea Celentano	DSL, Policy & Legislative Analyst
Yes	Jim Owens	Jim Owens Consulting Company, Facilitator
Yes	Jon Bowers	ODFW, GIS Coordinator
Interested Parties		
No	Rich Nawi	Klamath-Siskiyou Wildlands Center
Yes (Kirk)	Jennifer Fairbrother Alternate: Kirk Blaine	Native Fish Society
No	Kelley Beamer	Coalition of Oregon Land Trusts
No	Vanessa Green	Network of Oregon Watershed Councils
Yes (Breeze)	Racquel Rancier Alternate: Breeze Potter	Oregon Water Resource Department

Welcome/Introductions/Operating Principles

Jim Owens, Facilitator, welcomed the group and explained the meeting logistics, including that the meeting was being recorded. He advised that the audio recording and a meeting summary will represent the official public record of the RAC deliberations.

Bill Ryan, DSL Deputy Director, thanked the members for their participation on the RAC and provided background on the origin/history of the Department’s fill/removal program and its relationship to Essential Salmonid Habitat (ESH).

Jim reviewed the day’s agenda and the RAC Operating Principles. He requested that, for public record purposes, all communications be routed through him. Kaitlyn Wiggins, DSL Rules Coordinator, identified protocols for the Zoom meeting.

Tom Quintal raised a concern about the effects of ESH designation on mining on federal lands. Mike Hunter suggested that salmonid abundance in the ocean is affected by the designation of ESH habitat.

Rulemaking Process and Schedule

Kaitlyn Wiggins, DSL Rules Coordinator, explained the rulemaking process and schedule. She indicated that there will be public hearings this Fall, with adoption of a final rule potentially by the end of the calendar year. As an advisory group to DSL, the role of the RAC is to provide advice and diverse perspectives. While consensus will be sought on RAC recommendations, it is not required for DSL to move forward in rulemaking. She also reiterated that all RAC communications become part of the public record.

Project Purpose and Scope

Peter Ryan, DSL's ESH rulemaking project manager, explained the project purpose and scope. He noted that the main goal for this rulemaking is to update the designated ESH Map that was last updated in 2015. The Department has historically updated the ESH map through rulemaking and would like the RAC to look for a new approach to allow more frequent and regular ESH map updates while ensuring a transparent process. His presentation can be found at:

<https://www.oregon.gov/dsl/Laws/Documents/ESH%20Rulemaking%20PAC%201%20-%20Project%20Purpose%20and%20Scope.pdf>

Q/A and Discussion of Process

Jake Crawford asked why only habitat for anadromous fish versus all native fish is mapped. *Response:* The scope of the mapping is based on statutory direction. The history of the ESH legislation was summarized.

Scott Lepman asked about the scope of the required Fiscal Impact Statement. Kaitlyn explained that the Secretary of State requires completion of a Statement of Need and Fiscal Impact in conjunction with the submittal of proposed rule changes. Among other things, that Statement will address the impact on state agencies, units of local government and the public and the cost of compliance effect on small business. The RAC will be asked to review and comment on a draft Statement.

Current ESH Mapping and Derivation of Data

Jon Bowers, ODFW GIS Coordinator, gave a PowerPoint presentation on Oregon Fish Habitat Distribution and ESH that can be found at:

<https://www.oregon.gov/dsl/Laws/Documents/FHD%20and%20ESH%2020200922.pdf>

Jon explained that the data informing the designation of ESH is primarily provided by state and federal resource agencies. He explained the Oregon Fish Habitat Distribution Data Standards that guide the development and updating of data used in ESH designation and shared a data update flow chart. The process to revise the database is based on whether proposed revisions are observation-based or opinion-based. He then summarized changes to the 2015 ESH database proposed for 2020. For example, a 2019 update of the USFS/BLM Special Status

Species list added Klamath Mountain Province winter steelhead habitat. He then displayed the proposed 2020 ESH map and its various layers.

Tom Quintal desired to know who has responsibility for identifying additional ESH habitat and what are their qualifications. *Response:* Jon explained the qualifications and training required and the protocols used. Tom also asked about the labeling of habitat from its lowest to highest extent. *Response:* Depends on what the habitat is identified as, e.g. spawning or rearing. He asked who the point of contact is to discuss ESH delisting. Lauren Smith also queried as to how one comments on the ESH map. *Response:* DSL will consult with ODFW and get back to the RAC shortly with guidance on the process for proposing ESH map revisions during this rulemaking process.

Mary Anne Cooper asked how artificial versus natural habitat is differentiated. *Response:* Habitat is classified based on fish life cycle use, not based on the type of water body.

There was discussion that a course screen system is needed at DSL to weed out requests that would not meet change standards before they are submitted to ODFW. It was also recommended that a guide(s) is needed detailing the “how to” process for both reading the ESH map and for submitted requests for map revisions.

Scott Lepman asked about the consequence of being designated ESH. *Response:* ESH designation determines applicability of fill/removal regulations/permitting. Scott also asked about fish abundance trends and whether they are reflected in the map. *Response:* No, the map designates habitat.

April Snell asked when DSL intends to disseminate the draft 2020 map for public comment. *Response:* DSL will respond shortly regarding the process and timeframe for map distribution for public comment. At the next RAC meeting, an approach for soliciting and responding to comment will be presented for discussion. April also asked about the Department’s intentions to inform those outside of the RAC. *Response:* DSL will likely use its interested parties list serve; to be further discussed at the next meeting.

Meeting Summary and Next Steps

Jim indicated that meeting materials will be posted to the rulemaking web page within the next couple of days and a meeting summary will be distributed as soon as completed. Because of member conflicts with the proposed October 6 date, it was agreed that Jim would send out a Doodle poll for a second RAC meeting later that week. The team thanked the members for their participation.