



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

November 4, 2020 MEETING SUMMARY

Overview

The OAR 141-102 Rulemaking Advisory Committee has been convened by the Oregon Department of State Lands (DSL or Department) 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. The group's third meeting was convened via Zoom on November 4, 2020.

A link to the meeting can be found at: <https://us02web.zoom.us/rec/share/2ghmX4myDrvY0My6-uwUSbUb7SjwpTowTLyqsdUZYEVpHnV5dpYxYZnMu6QToPIV.sGRkRdkrrXYiYFXF>

RAC Members and Attendance

| Present? | Name | Affiliation |
|------------|---|--|
| Yes | Joy Vaughan | Oregon Department of Fish & Wildlife (ODFW) |
| Yes Yes | Ellen Hammond Alternate: Tyler Manitsas | Oregon Department of Agriculture (ODA) |
| Yes No | Jessica Dorsey Alternate: Kristel Griffith | 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 No | Stacey Detwiler Alternate: Robyn Janssen | Rogue Riverkeepers |
| Yes | Kimberly Priestly | WaterWatch of Oregon |
| No | Helena Linnell | Coquille Indian Tribe |
| Yes | Gary James | Confederated Tribes of the Umatilla Indian Reservation |
| Yes | Kelly Coates | Cow Creek Band of the Umpqua Tribe |
| Yes | Lindsay McClary | Confederated Tribes of the Grand Ronde |
| Yes | James (Jim) Capurso | U.S. Forest Service |

| Present? | Name | Affiliation |
|---------------------------|--|--|
| No | Jake Crawford | Fly Water Travel |
| Yes | Scott Lepman Contact: Alexandra Keister | Scott Lepman Company – Real Estate Appraisal |
| Yes | Troy Brandt | Oregon Chapter, American Fisheries Society |
| Staff/Advisors | | |
| No | Bill Ryan | DSL, Deputy Director |
| Yes | Kaitlyn Wiggins | DSL, Rules Coordinator |
| Yes | Pete Ryan | DSL, Project Manager |
| Yes | Dana Hicks | DSL, Planning & Policy Manager |
| Yes | 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 |
| No | Jennifer Fairbrother Alternate: Kirk Blaine | Native Fish Society |
| No | Kelley Beamer | Coalition of Oregon Land Trusts |
| No | Vanessa Green | Network of Oregon Watershed Councils |
| No | Tammy Dennee | Oregon Cattleman’s Association |
| No | Racquel Rancier Alternate: Breeze Potter | Oregon Water Resource Department |
| Yes | Nancy Taylor | Oregon Department of Fish & Wildlife |

Welcome and Introductions/Agenda Review/Meeting #2 Summary

Jim Owens, Facilitator, welcomed the group and asked for introductions. He then reviewed the agenda, indicating that the meeting would focus on the initial draft Rules and an initial draft Fiscal Impact Statement, with input received informing the development of refined Rules and Fiscal Impact Statement. He asked for corrections or questions about the Meeting #2 Summary. In response to a question of clarification from Scott Lepman, Jim confirmed that there are no changes to the fill/removal process or permitting associated with this rulemaking. There were no other comments or questions on the Summary.

Scope of Rulemaking/Initial Draft Rules

Andrea Celentano, DSL, provided context for the rulemaking process and explained the substantive changes to the existing Rules. She noted that, based on Department of Justice

advice, a base map be referenced in the Rules. DSL is now proposing that the 2021 ESH Map be specifically included in the Rules as the base map. She indicated that this is a change in scope, as the original intent was to remove the reference to a base map. Consequently, there is a need for a fourth RAC meeting to provide an opportunity for the group to review a more refined version of the Rules.

Andrea walked through each of the substantive changes being recommended by the Department. In response to a question about providing editorial comments, she indicated that the Department is seeking both substantive and editorial comments. In response to several requests, Jim indicated that he would distribute a redline version of the initial draft Rules.

Kelly Coates indicated that she appreciated the provision for tribal engagement outside of the public comment process but asked for details about that process, including how much additional notice would be provided.

Andrea explained the Department's proposal to reference a base map in OAR 141-102-0030, indicating that the map can be modified pursuant to the process outlined in the Rule. She also pointed out a new provision in the Rules in coordination with other natural resource agencies. Mary Anne Cooper asked about the process to notify landowners with valid notices for agricultural channel maintenance. **A:** DSL is working with ODA on a MOU, which will include notification provisions. Regardless of the timeline for Map updates, the goal is to ensure there are no surprises for landowners with valid notices for ag channel maintenance. Fewer, less significant Map changes would be expected with more frequent updates, making it easier to manage the notification process. Ellen Hammond, ODA, confirmed that the agencies are continuing to work through the details for notification with the DOJ. Scott asked about how individual property owners and the public will be informed. **A:** This is addressed in OAR 141-102-0040. Raising awareness is seen as essential to having effective rules.

Andrea indicated that the most substantive changes proposed to the existing Rules are found in OAR 141-102-0040, including how DSL will process Map change requests, coordinate with ODFW, and provide for public comment and tribal consultation. ODFW has always had a protocol for processing Map change requests, while DSL's process has been to update the ESH map every five years through rulemaking. In response to a question about the frequency of receiving and acting upon requests and whether that will be on a rolling or annual basis, Dana and Peter indicated that the intent is to create a rolling process for the receipt of requests with annual action to amend the Map and provide opportunities for public comment and tribal consultation. Change requests can be submitted at any time and be forwarded to ODFW, but Map revisions would be published and take effect annually.

Concerns were raised regarding map errors and whether those would be handled administratively; clarification is needed. Jon Bowers, ODFW, clarified that the public has always had the ability at any time to request Map changes, with the process being outlined in the Stewardship Plan for the Oregon Fish Habitat Distribution Database.

Kimberly suggested that the term "person" needs to include ODFW and that the Rules be clearer about ODFW's ability to revise the Map on its own initiative based upon its data, rather than just based upon individual requests for Map changes. **A:** Peter clarified that the ESH Map is managed by DSL and is used as the threshold for removal/fill permitting decisions. ODFW is the steward of the Oregon Fish Habitat Distribution database, which is constantly updated and is the basis for updating the Map. It was also clarified that individual change requests for data

supporting the ESH Map should be submitted to DSL or ODA for screening, rather than to ODFW.

In response to a question about submitting change requests during this rulemaking, the group was reminded that this was presented at the October 7 meeting and summarized in the October 27 Fact Sheet. All parties will be welcome to submit requests during the 30-day public comment period following the filing of the Notice of Proposed Rulemaking.

Copies of the form the Department will use to process data/map change requests were requested. It was also recommended that a webpage be developed to explain the details of the process (procedural manual).

Andrea explained that a new section on the public review process is being added to the Rules. Mary Anne suggested clarifying which requested changes will go through the public comment process versus those that will not. **A:** The Department will clarify how errors will be processed in terms of public comment.

Kelly requested clarification that tribal consultation will occur annually rather than with the submittal of every change request. She indicated that a 60-day consultation period would be helpful. In lieu of tribal engagement, she suggests using government-to-government consultation.

Scott asked how the public will “know” that the Map is being revised and that there is a public comment period. **A:** The Department follows the Administrative Procedures Act and notification procedures common to rulemaking, which includes a news release and a notice to interested parties. DSL will further clarify the process the Department will follow for annual changes outside of rulemaking.

Staff indicated that revisions/suggestions discussed today will be incorporated into a revised draft that will be distributed prior to the RAC’s next meeting.

Draft Fiscal Impact Statement

Kaitlyn provided a brief explanation of the purpose and scope of the Fiscal Impact Statement (FIS), noting that the scope is limited to revisions to the Rules rather than the existing Rules.

Peter indicated that, while an annual Map update process may result in additional work for DSL, the overall impacts to the Department are expected to be minimal. It was pointed out the FIS needs to consider impacts in the situation when a landowner did not previously have an ESH designation but now does. Also, the consideration of impacts to local governments needs to be broadened to consider water districts, irrigation districts, etc. A revised draft will reconsider the cost of compliance associated with the addition of a ESH designation to a property.

Summary and Next Steps

Jim indicated that a red line version of the initial draft Rules, as well as revised draft Rules, will be distributed. A revised FIS will also be distributed at least one week prior to the next meeting. A fourth RAC meeting will be scheduled to review these revised drafts and to wrap up the RAC process. Jim will send out a Doodle poll for this meeting. The team thanked the members for their participation.