

10.27.20

**RULEMAKING ADVISORY COMMITTEE  
DIVISION 102 REVISIONS TO ESSENTIAL SALMON HABITAT MAPS**

**FACT SHEET**

**Scope of this Rulemaking**

This rulemaking is focused only on OAR Chapter 141, Division 102 -- Oregon Essential Indigenous Anadromous Salmonid Habitat (ESH) – and specifically on two aspects of Division 102, both related to process:

- The process to amend ESH designations; and
- The process for the Oregon Department of State Lands (DSL) to adopt updated maps of ESH in consultation with the Oregon Department of Fish and Wildlife (ODFW) and the public.

This rulemaking does not revise:

- Definitions of Essential Indigenous Anadromous Salmonid Habitat;
- ODFW’s Fish Habitat Distribution database and its Stewardship Plan for that database; or
- Any aspect of the state’s Removal-Fill law and rules.

ESH is a threshold determination of the need for and type of permit required for removal/fill; it is not in itself a permit or a determination of authorized uses.

**Role of RAC in Rulemaking**

A diversity of expertise, skill sets and viewpoints are a valued part of DSL’s rulemaking process. The Rules Advisory Committee (RAC) is an advisory body to DSL; any rule amendments are solely DSL’s responsibility. The RAC is being asked to advise on:

- The process for responding to ESH Map revision requests during this rulemaking;
- Revisions to the existing Division 102 rules; and
- The draft Fiscal Impact Statement.

**Role of RAC in Reviewing ESH Map Changes**

The RAC is not being asked to review and comment on requests for specific ESH Map changes. Those requests will be responded to individually by DSL in consultation with ODFW, pursuant to a screening process and requirements established in ODFW’s Fish Habitat Distribution Data Stewardship Plan.

**Process and Schedule for Submitting ESH Map Change Requests During this Rulemaking**

RAC members are welcome to share the draft 2020 ESH Map with their constituencies at any time during this rulemaking process. RAC members and their constituencies are requested to hold specific comments on ESH designations until the 30-day public comment period following completion of the RAC process. Requested changes will need to be submitted pursuant to the process for the submittal of and response to map change requests developed during this rulemaking process.

Tribal governments will be individually contacted by the Department to determine if they wish to provide input on the 2020 ESH Map and how they wish to engage.

### **Frequency of and Process for Future ESH Map Updates**

DSL has historically updated the ESH Map through rulemaking and is seeking input on a new approach to allow more frequent and easier ESH Map updates while ensuring a transparent process. During the five-year interval since the last update, a significant amount of new data was identified that merited mapping. Mapping errors have also been identified that could be better processed administratively, rather than through rulemaking. Technology advances in the intervening years enable easier designation updates.

Input is also being solicited on how to best coordinate ESH designation change requests from the public, including those made through the Department of Agriculture's Drainage Channel Maintenance program.

### **Scope of Accompanying Fiscal Impact Statement**

The Secretary of State requires that new or amended administrative rules be accompanied by a Fiscal Impact Statement (FIS) that address how state agencies, local governments, small businesses, and the public may be fiscally impacted by the rules. The FIS assesses only the impact of revisions to the existing administrative rules, which in this case focuses on changes to the process for the mapping of ESH. The FIS will not directly address the fiscal impact of ESH designation; policy for ESH protection has been established by a variety of statutes and other authorities.