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DEPARTMENT OF STATE LANDS

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FILING CAPTION: Revisions to the Oregon Essential Indigenous Anadromous Salmonid Habitat (ESH) Rules

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RULES:

141-102-0000, 141-102-0010, 141-102-0020, 141-102-0030, 141-102-0040

AMEND: 141-102-0000

RULE TITLE: Purpose

NOTICE FILED DATE: 01/27/2021

RULE SUMMARY: Replace the rulemaking requirement for ESH map updates. Add additional purpose of developing and implementing a process for responding to requests to review the accuracy of ESH designations and mapping.

RULE TEXT:

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

- (1) Further define "essential indigenous anadromous salmonid habitat (ESH)";
- (2) Designate ESH in consultation with the Oregon Department of Fish and Wildlife (ODFW) and in consultation with other affected parties;
- (3) Establish the process to amend 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
- (5) 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

AMEND: 141-102-0010

RULE TITLE: Policy

NOTICE FILED DATE: 01/27/2021

RULE SUMMARY: Add policies to provide for public comment, Tribal engagement, and Tribal consultation, while promoting ESH awareness.

RULE TEXT:

- (1) It is the policy of the State of Oregon to protect ESH.
- (2) To achieve this policy, the Department shall:
 - (a) Consult with ODFW concerning the status of Oregon's indigenous anadromous salmonid species.
 - (b) Identify ESH in consultation with ODFW and other affected parties.
 - (c) Provide for public 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 opportunities for Tribal consultation and engagement to all federally recognized Tribes in Oregon, recognizing the varied interests and unique connections Tribes have with salmonids and their habitat.
 - (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

AMEND: 141-102-0020

RULE TITLE: Definitions

NOTICE FILED DATE: 01/27/2021

RULE SUMMARY: Remove reference to the Oregon Department of Fish and Wildlife (ODFW) Data Standard in the definition of Essential. Define Tribal Consultation as direct, meaningful government to government communication between the Department and members of the federally recognized Tribes in Oregon, with the purpose of receiving input.

RULE TEXT:

(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.

(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.

(5) "Tribal Consultation" means direct, meaningful government to government communication between the Department and members of the federally recognized Tribes in Oregon, with the purpose of receiving input.

STATUTORY/OTHER AUTHORITY: ORS 196.810

STATUTES/OTHER IMPLEMENTED: ORS 196.800 - 196.990, 390.805 - 390.925

AMEND: 141-102-0030

RULE TITLE: Designation of Essential Salmon Habitat (ESH)

NOTICE FILED DATE: 01/27/2021

RULE SUMMARY: Identify the 2021 Essential Salmonid Habitat Map and describe how the Department will conduct outreach to Tribes and the affected public to promote awareness of ESH and ESH updates.

RULE TEXT:

(1) Areas eligible for designation as ESH 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 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 detailed maps of designated ESH available on the Department's website; physical maps will be made available upon request, at cost.

(4) The Department will notify and provide the opportunity for Tribal consultation to 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

AMEND: 141-102-0040

RULE TITLE: Revisions to ESH

NOTICE FILED DATE: 01/27/2021

RULE SUMMARY: Revisions to ESH designations will follow the current ODFW Stewardship Plan for the Oregon Fish Habitat Distribution Database. To allow for more frequent updates, the Department will consult annually with ODFW and revise ESH when advised that new or higher quality data is available. The Department will provide opportunities for Tribal input and Tribal consultation, and public review and comment when ESH map changes are proposed. If changes occur, final designations and an updated map will be adopted no later than February 1 of each year. A person may request review of an existing designation at any time; however, changes will not be reflected until the next annual update.

RULE TEXT:

Revisions to ESH designations shall be made in accordance with the current ODFW Stewardship Plan for the Oregon Fish Habitat Distribution Database and 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) If advised by ODFW that new or higher quality data is not available, ESH designations will not change for that year.
 - (b) When advised by ODFW that new or higher quality data is 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 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 this rule before adopting a revised map.
 - (a) The Department will notify federally recognized Tribes within Oregon about revisions to ESH, and provide an opportunity for Tribal consultation at least 60 days before annual changes are adopted.
 - (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