

DRAFT: These are draft rules that are meant to support feedback and input from the Rules Advisory Committee. Substantive changes have been highlighted for your consideration.

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1 **Department of State Lands, Chapter 141, Division 102**
2 **OREGON ESSENTIAL INDIGENOUS ANADROMOUS SALMONID HABITAT**

3
4 **141-102-0000**

5 **Purpose**

6
7 Pursuant to ORS 196.810(1)(b), these rules:

8
9 (1) Designate ~~Further define~~ "essential indigenous anadromous salmonid habitat (ESH)" ~~on~~
10 ~~maps that are made a part~~";

11
12 (2) Designate ESH in consultation with the State Department of Fish and Wildlife and in
13 consultation with other affected parties;

14
15 ~~(23)~~ Establish the process to amend the ESH designations as new information becomes
16 available;

17
18 (4) Develop and implement a process for responding to requests to review the accuracy of an
19 ESH designation and mapping; and

20
21 ~~(35)~~ Require an authorization from the Department for activities involving the fill or removal of
22 any amount of material in ESH unless the activity is exempt.

23
24 Statutory/Other Authority: ORS 196.810

25 Statutes/Other Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925

26 History:

27 DSL 1-2010, f. 3-15-10, cert. ef. 4-1-10

28 DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

29 DSL 1-2004, f. & cert. ef. 5-21-04

30 DSL 4-2001, f. & cert. ef. 4-18-01

31 DSL 8-1999, f. 3-9-99, cert. ef. 5-1-99

32 LB 4-1995, f. 12-13-95, cert. ef. 1-1-96

33
34 **141-102-0010**

35 **Policy**

36
37 (1) It is the policy of the State of Oregon to protect ESH.
38

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

2
3 (a) Consult with the Department of Fish and Wildlife (ODFW) concerning the status of Oregon's
4 indigenous anadromous salmonid species;

5
6 (b) Identify ESH in consultation with ODFW and ~~the other affected parties.~~

7
8 (c) Provide for public through rulemaking; comment. Recognize the high level of public interest
9 in ESH by providing opportunities for public review and comment when there are proposed
10 changes to ESH designations.

11
12 ~~(d) Provide for tribal engagement. Recognize the varied interests and unique connections~~
13 ~~tribes have with salmonids and their habitat by providing opportunities for meaningful tribal~~
14 ~~engagement and government to government consultation.~~

15
16 (e) Promote awareness of ESH. Raising awareness is the best way to protect ESH. To support
17 this the Department will coordinate with other natural resource agencies, including the Oregon
18 Department of Agriculture (ODA) and Oregon Department of Fish and Wildlife (ODFW), to
19 promote awareness of ESH and ESH updates.

20
21 (f) Review all projects proposed in ESH pursuant to the standards set forth in the state's
22 Removal-Fill Law (ORS 196.600 to 196.990) and rules (OAR 141-085).

23
24 Statutory/Other Authority: ORS 196.810

25 Statutes/Other Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925

26 History:

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28 DSL 1-2004, f. & cert. ef. 5-21-04

29 DSL 4-2001, f. & cert. ef. 4-18-01

30 DSL 8-1999, f. 3-9-99, cert. ef. 5-1-99

31 LB 4-1995, f. 12-13-95, cert. ef. 1-1-96

32
33 **141-102-0020**

34 **Definitions**

35
36 (1) "Essential" means those portions of a stream reach that fill all or part of the basic or
37 indispensable spawning or rearing needs of indigenous anadromous salmonids and are those
38 areas necessary to prevent the depletion of indigenous anadromous salmonids. Such areas

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1 include "spawning habitat" and "rearing habitat" as defined below under sections (3) and (4) of
2 this rule ~~(Oregon Fish Habitat Distribution Data Standard, Version 2.0, February 2011:~~
3 ~~[ardv2.pdf](http://www.oregon.gov/DAS/CIO/GEO/standards/docs/oregonfishhabitatdistributiondatastand
4 <a href=)~~).

5
6 (2) "Indigenous anadromous salmonid" means chum, sockeye, Chinook and Coho Salmon, and
7 steelhead and cutthroat trout, that are members of the family of Salmonidae and are listed as
8 sensitive, threatened or endangered by a state or federal authority.

9
10 (3) "Spawning Habitat" ~~"~~ includes areas where eggs are deposited and fertilized. For some
11 species, including salmonids, this also includes areas where gravel emergence occurs and where
12 at least some juvenile development occurs.

13
14 (4) "Rearing Habitat" includes areas outside primary spawning habitats where juvenile fish take
15 up residence during some stage of juvenile development and use the area for feeding, shelter,
16 and growth. Some migration also occurs as juvenile and adult fish move between the ocean and
17 spawning grounds.

18
19 Statutory/Other Authority: ORS 196.810

20 Statutes/Other Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925

21 History:

22 DSL 1-2015, f. 2-10-15, cert. ef. 3-1-15

23 DSL 1-2010, f. 3-15-10, cert. ef. 4-1-10

24 DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

25 DSL 1-2004, f. & cert. ef. 5-21-04

26 DSL 4-2001, f. & cert. ef. 4-18-01

27 DSL 8-1999, f. 3-9-99, cert. ef. 5-1-99

28 LB 4-1995, f. 12-13-95, cert. ef. 1-1-96

29
30 **141-102-0030**

31 **Designation of Essential Salmon Habitat (ESH)**

32
33 (1) Areas ~~designated~~ eligible for designation as ESH ~~shall~~ include the waters of this state as
34 described in OAR 141-085, including streams and any adjacent off-channel rearing or high-flow
35 refugia habitat with a permanent or seasonal surface water connection to the stream.

36
37 (2) The streams and stream segments designated as ESH are shown ~~on maps that are~~
38 incorporated by reference in this rule in the 2021 Essential Salmonid Habitat Map. The

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1 Department may modify ESH designations based on the best available information following
2 the process in OAR 141-102-0040.

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

8
9 (4) The Department will conduct outreach to notify federally recognized tribes in Oregon and
10 the affected public to promote awareness of ESH and ESH updates.

11
12 Statutory/Other Authority: ORS 196.810

13 Statutes/Other Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925

14 History:

15 DSL 1-2015, f. 2-10-15, cert. ef. 3-1-15

16 DSL 1-2010, f. 3-15-10, cert. ef. 4-1-10

17 DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

18 DSL 1-2004, f. & cert. ef. 5-21-04

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20 DSL 8-1999, f. 3-9-99, cert. ef. 5-1-99

21 LB 4-1995, f. 12-13-95, cert. ef. 1-1-96

22
23 **141-102-0040**

24 **Revisions to ESH**

25
26 Revisions, ~~additions to or deletions from the list and maps of ESH~~ESH designations shall be
27 made ~~by amendment to these administrative rules according to the~~in accordance with the
28 current ODFW Stewardship Plan for the Oregon Fish Habitat Distribution Database and the
29 following procedure:

30
31 (1) Requests to change an ESH designation and mapping may be submitted to the
32 Department at any time. The Department will submit requests to ODFW for consideration.

33
34 (2) Additions, modifications, and deletions to ESH accepted by ODFW will be adopted by the
35 Department during the next annual update process.

36

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1 (3) Corrections in data entry and map alignment accepted by ODFW may be adopted by the
2 Department outside of the annual update process. Adopted changes are considered effective
3 but may not be reflected on ESH maps until the next annual map update.
4

5 (4) The Department will consult annually with ODFW on the accuracy of the ESH designations-
6 since the last update.
7

8 ~~(2) In consultation with ODFW and other affected parties, the Department may revise~~
9 ~~the maps when (a) If advised that new or higher quality data become are not available~~
10 ~~and/or when new state or federal listings or delistings occur that would substantially,~~
11 ~~ESH designations will not change for that year.~~
12

13 ~~(b) When advised by ODFW that new or higher quality data are available, the~~
14 ~~Department shall adopt the revised ESH designations.~~
15

16 (5) The Department will provide opportunity for input from interested parties on updates to
17 ESH designations as provided in accordance with subsection (2) of this section before adopting
18 a revised map.
19

20 (a) The Department will notify federally recognized Tribes within Oregon about revisions
21 to ESH at least 60 days before annual changes are adopted.
22

23 (b) Revisions to ESH must be available for public review and comment for a minimum of
24 30 calendar days. The Department may extend the extent of designated
25 habitat comment period at its discretion.
26

27 (c) Recommendations and comments regarding revisions to ESH designations must be
28 submitted in writing to the Department, either electronically or by mail.
29

30 (6) If annual changes occur, final designations and an updated map will be adopted no later
31 than February 1 of each year.
32

33 Statutory/Other Authority: ORS 196.810

34 Statutes/Other Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925

35 History:

36 DSL 1-2010, f. 3-~~15~~1

37 ~~5~~-10, cert. ef. 4-1-10

38 DSL 1-2004, f. & cert. ef. 5-21-04

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- 3 LB 4-1995, f. 12-13-95, cert. ef. 1-1-96
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