

Secretary of State

NOTICE OF PROPOSED RULEMAKING HEARING*

A Statement of Need and Fiscal Impact accompanies this form.

Oregon Department of Fish & Wildlife, Fish Division	635
Agency and Division	Administrative Rules Chapter Number
Therese Kucera	(503) 947-6033
Rules Coordinator	Telephone
3406 Cherry Avenue NE, Salem, OR 97303	
Address	

RULE CAPTION

Amend Clackamas Subbasin Fish Management Rules to Update Status and Pursue Reintroduction of Bull Trout
 Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

September 2, 2010	8:00 a.m.	Washington County Fair Complex Cloverleaf Building 873 NE 34th Avenue Hillsboro, OR 97124	Oregon Fish & Wildlife Commission
Hearing Date	Time	Location	Hearings Officer

Auxiliary aids for persons with disabilities are available upon advance request.

RULEMAKING ACTION

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

ADOPT: OAR Chapter 635, Division 500 as determined justified.

AMEND: OAR Chapter 635, Division 500 as determined justified.

REPEAL: OAR Chapter 635, Division 500 as determined justified.

RENUMBER:

AMEND & RENUMBER:

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.172 and 506.109.

Other Auth.:

Stats. Implemented: ORS 496.004, 496.009, 496.164, 496.171 and 496.182.

RULE SUMMARY

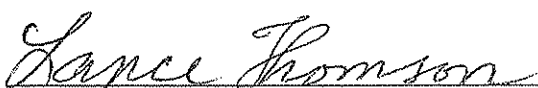
Amend rules relating to Clackamas Subbasin Fish Management, specifically the management of trout populations and proposed reintroduction of bull trout to this subbasin. The rule modifications clarify the status of bull trout in the Clackamas subbasin and direct staff to pursue the reintroduction of bull trout, to contribute to recovery of this species within the Willamette Recovery Unit, pursuant to the U.S. Fish and Wildlife Service Draft Bull Trout Recovery Plan.

Housekeeping and technical corrections to the regulations may occur to ensure rule consistency.

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business.

September 2, 2010

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)


Signature

Lance Thomson
Printed name

July 15, 2010
Date

* Hearing Notices published in the Oregon Bulletin must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm the preceding workday.

STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Oregon Department of Fish & Wildlife, Fish Division

635

Agency and Division

Administrative Rules Chapter Number

Amend Clackamas Subbasin Fish Management Rules to Update Status and Pursue Reintroduction of Bull Trout

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of: Amendment of OAR Chapter 635, Division 500, related to Clackamas Subbasin Fish Management rules for the management of trout populations.

Statutory Authority: ORS 496.012, 496.138, 496.146, 496.172, and 506.109.

Other Authority:

Stats. Implemented: ORS 496.004, 496.009, 496.164, 496.171, and 496.182.

Need for the Rule(s):

This amended rule is needed to: (1) Clarify the status of bull trout in the Clackamas subbasin to be consistent with current knowledge of this species; and (2) Direct staff to pursue the reintroduction of bull trout into the Clackamas subbasin to contribute to recovery of this species within the Willamette Recovery Unit, pursuant to the U.S. Fish and Wildlife Service Draft Bull Trout Recovery Plan (USFWS, 2002).

Documents Relied Upon, and where they are available:

1. Staff Report for the Oregon Fish & Wildlife Commission hearing of September 2, 2010.

The above documents are available for public inspection in the Department of Fish and Wildlife, Fish Division, Third Floor, 3406 Cherry Avenue NE, Salem, Oregon, between 8:00 a.m. and 4:00 p.m., on normal working days, Monday through Friday.

Fiscal and Economic Impact including Statement of Cost of Compliance: See attached.

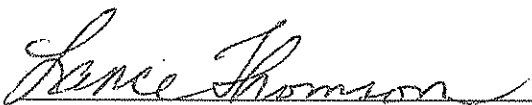
How were small businesses involved in the development of this rule?

Small business representatives were not formally involved in the development of the proposed rule amendment, but representatives of several small businesses were invited to participate in the "Clackamas Bull Trout Stakeholders" public advisory group convened by the department in 2008 to review plans for the proposed reintroduction.

Administrative Rule Advisory Committee consulted?: No.

If not, why?:

This amendment is relatively minor so an Administrative Rule Advisory Committee was determined not to be necessary. The proposal for bull trout reintroduction was reviewed by the "Clackamas Bull Trout Stakeholders" public advisory group and comments were provided by that group. Public comment on the proposed reintroduction was also solicited/received by USFWS in February 2010 as part of the federal public review process of the "Draft Environmental Assessment-Reintroduction of Bull Trout to the Clackamas River, Oregon" related to the proposed section 10j rule to designate this population as a non-essential experimental population.


Signature

Lance Thomson
Printed Name

July 15, 2010
Date

**Fiscal and Economic Impact Statement for the September 2, 2010 Hearing
In the Matter of Rules Relating to the Reintroduction of
Bull Trout into the Clackamas Basin**

Fiscal and economic impact: Rule changes are being proposed to reintroduce bull trout into the Clackamas River Basin. The plan for reintroduction involves staff time to complete reintroduction activities such as fish collection, transportation and release, and monitoring of the project. The proposed rules will affect state agencies, units of local government, and the public, respectively, as discussed below:

A. The only state agencies that would be affected by adoption of these rules is the Oregon Department of Fish and Wildlife (ODFW) and the Oregon State Police (enforcement of existing regulations). Costs to ODFW to coordinate the reintroduction for one biennium are currently estimated to be \$385,000. An additional \$47,600 would be necessary as a one-time cost to purchase PIT tag readers, detection stations, and radio telemetry equipment. The costs per biennium would include one staff position as a coordinator of the reintroduction program as well as a two-person seasonal crew to assist in implementing reintroduction and monitoring activities. Costs for supplies and services are included in this estimate. Fish transport and liberation would be accomplished using existing equipment. It is anticipated that biennial and one-time costs will be covered through grants from the United States Fish and Wildlife Service (USFWS), other federal sources, and various non-federal grant programs.

B. No units of local government are expected to be affected by these rules. No significant changes from the current levels of any local agencies' operations or expenditures are expected as a result of the adoption of these rules.

C. The public could be affected by the adoption of these rules. The reintroduction of a viable population of bull trout into the basin could eventually create new angling opportunities for bull trout in this basin. It is unknown what the ultimate scale of a potential fishery could be or the business activity that could be associated with it. Citizens of Oregon may also benefit from the establishment and existence of a healthy bull trout population in this basin, and potentially the eventual recovery of bull trout.

The effects of the reintroduction of ESA listed bull trout on businesses and landowners will be minimized as a result of the USFWS proposed designation of this population as a "*nonessential experimental population*" pursuant to section 10j of the federal Endangered Species Act. This designation alleviates landowner and water-user concerns about possible land and water use restrictions by providing a flexible management framework for protecting and recovering bull trout, while ensuring that the daily activities of landowners and water-users are unaffected. Portland General Electric (PGE) has expressed concern that the establishment of bull trout in the Clackamas basin could result in increased predation on listed salmon and steelhead species, and potentially have an effect on PGE's ability to meet commitments of their FERC license for the Clackamas Hydroelectric Project. PGE is concerned that bull trout predation on these species could preclude PGE from achieving the required downstream survival standards for juvenile salmonids through the hydroelectric project, and that failure to achieve the standard could result in PGE being required to implement additional improvements to their project, with an associated

fiscal impact to the company. ODFW, USFWS, NOAA Fisheries and PGE are meeting to cooperatively address these concerns. Regardless, the degree of potential bull trout predation on salmon and steelhead species in this basin is unknown, so the fiscal impact to PGE is similarly undetermined. The cost would also depend on whether initial measures implemented by PGE to improve survival are effective, or if more costly measures become necessary.

Most businesses affected by these rules are believed to be "small business."

The rules are believed to be fully compatible with legislative direction on the goals of wildlife management in Oregon.

We do not believe that a less intrusive or less costly alternative adaptation to only small business is consistent with the purpose of the rule.