

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING HEARING\***  
 A Statement of Need and Fiscal Impact accompanies this form.

Oregon Department of Fish and 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**

Conservation Plan for Fall Chinook Salmon in the Rogue Species Management Unit  
 Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

January 11, 2013	08:00 a.m.	3406 Cherry Ave. NE Salem, OR 97303	Oregon Fish and 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.

Stat. Auth.: ORS 496.138, 496.146, & 506.119

Other Auth.: Native Fish Conservation Policy (OAR 635-007-0502 through 0509); Federal Endangered Species Act.

Stats. Implemented: ORS 496.162, 506.109 & 506.129

**RULE SUMMARY**

Adopt or amend rules, as necessary, relating to the *Rogue Fall Chinook Conservation 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.

January 11, 2013

**Last Day for Public Comment**

(Last day to submit written comments to the Rules Coordinator)

  
 Signature

Lance Thomson  
 Printed name

November 15, 2012  
 Date

\* Rulemaking 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. A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Rulemaking Notice in the Oregon Bulletin or 28 days from the date Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

**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 and Wildlife, Fish Division  
Agency and Division

635  
Administrative Rules Chapter Number

In the Matter of: Amendment of OAR Chapter 635, Division 500, related to a conservation and recovery plan for Fall Chinook salmon in the Rogue Species Management Unit.

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

Conservation Plan for Fall Chinook Salmon in the Rogue Species Management Unit.

Statutory Authority: ORS 496.138, 496.146, & 506.119

Other Authority: Native Fish Conservation Policy (OAR 635-007-0502 through 0509), federal Endangered Species Act.

Stats. Implemented: ORS 496.162, 506.109 & 506.129

Need for the Rule(s):

In keeping with planning requirements under Oregon's Native Fish Conservation Policy, the **Rogue Fall Chinook Conservation Plan** was developed. Fish management plans, or portions thereof, need to be adopted into administrative rule(s) by the Oregon Fish and Wildlife Commission.

Documents Relied Upon, and where they are available:

1. Staff Report for the Oregon Fish and Wildlife Commission hearing of January 11, 2013.

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?

Department staff convened a public advisory committee to aid with development of the Rogue Fall Chinook Conservation Plan (Plan). Nine individuals served as a team representing recreational and commercial fishing interests. The advisory committee met 22 times during the course of Plan development. A draft of the Plan was released for public review and comment. Public meetings were held in Grants Pass and Brookings in June 2012 to convey key elements of the draft plan and to accept public comment. A final draft of the Plan was posted on ODFW's website in September 2012 for public review.

Administrative Rule Advisory Committee consulted?: No.  
If not, why?:

The alternatives for rule changes were developed through cooperation and consultation with a public advisory committee. Department staff also conducted public meetings pertaining to plan development.

  
Signature

Lance Thomson  
Printed name

November 15, 2012  
Date

**Fiscal and Economic Impact Statement**  
**January 11, 2013 Hearing In the Matter of Rules Relating to**  
**2012 Rogue Fall Chinook Salmon Conservation Plan**

Fiscal and economic impact: The Conservation Plan for Fall Chinook Salmon in the Rogue Species Management Unit of 2012 (Rogue Fall Chinook Conservation Plan) represents the State of Oregon's strategy to maintain and enhance Fall Chinook salmon in that area of coastal Oregon south of Elk River (near Port Orford). This area is referred to as the Species Management Unit (SMU) for Rogue Fall Chinook salmon. Nine populations of Fall Chinook salmon are present in the SMU. The proposed rules focus on elements of the Rogue Fall Chinook Conservation Plan that pertain to the Oregon Department of Fish and Wildlife's (ODFW) statutory authority.

This plan maintains and enhances the Oregon Plan for Salmon and Watersheds, and is a major step required under the Native Fish Conservation Policy (NFCP), previously adopted by the Oregon Fish and Wildlife Commission. The NFCP calls for conservation plans, such as this Rogue Fall Chinook Plan, to identify and implement appropriate strategies and actions necessary to restore native fish in Oregon to levels that provide benefits to the citizens of the state.

Overall, Rogue Fall Chinook Conservation Plan formalizes current management practices for Fall Chinook in the Rogue SMU. The plan does not propose new land use regulations, maintains existing land and water use regulatory programs, and enhances support for non-regulatory cooperative conservation. The plan does propose to modify hatchery practices for the hatchery fall chinook programs in the Chetco and lower Rogue to reduce potential impacts to naturally produced fall Chinook and to increase the harvest of hatchery produced fall Chinook.

The desired status goal of the plan is to manage Rogue Fall Chinook salmon and their habitat so that: (1) The population is sustained for a minimum of 100 years; (2) The productive capacity of the habitat is maintained in order to provide ecological, economic, and cultural benefits; and (3) The opportunities for sport and commercial fishers are consistent with population status.

Implementation of any new status criteria, or the deletion of any adopted status criteria will necessitate a future rule-making process to further modify whatever rules are adopted at this hearing. Such a revision would be necessary only if ODFW determines that adopted management strategies either (1) Are failing to maintain, or move the SMU towards, desired status; or (2) Are failing to adequately protect the SMU from a significant deterioration in status.

The proposed rules will affect state agencies, units of local government and the public, respectively, as discussed below.

A. The state agency which could be most affected by adoption of these rules is the Oregon Department of Fish and Wildlife. There may be some additional costs for certain components of the proposed monitoring, evaluation, and research that is needed to ensure the efficacy of management strategies and actions implemented as part of this plan but overall, no significant change in costs or staffing levels are expected to result from the proposed plan.

It is expected that the proposed monitoring activities would take about twenty-one months of seasonal time by experimental biological aides, which would be absorbed by existing staff and not incur additional costs to the department. As funding and staffing allow, ODFW will identify and support evaluation that is needed to determine the effectiveness of management strategies and management actions. Also as funding and staffing allow, ODFW will support research which addresses uncertainties related to management strategies and actions it determines are needed to help achieve the desired status goal for Rogue fall Chinook. These special projects would likely require additional staffing (either temporary or limited duration positions) or may be contracted to another entity. ODFW anticipates that costs associated with the special projects would be shared with other resource agencies or public partners. There are no cost estimates available for these potential special projects at this time.

In the Rogue Fall Chinook Conservation Plan, there are two proposed alternative sets of measures for the Rogue Stratum and two alternative sets for the Coastal Stratum, all of which will be considered by the Commission. For each stratum, one set is proposed by ODFW staff and the other set by an outside advisory committee. In each case for this conservation plan, the proposed sets are very similar with only minor differences.

Under the advisory committee alternative for the Rogue Stratum proposed in the plan, predation is identified as a limiting factor for Fall Chinook and it is recommended that ODFW (1) Initiates a program to decrease cormorant densities in the Rogue River estuary; and (2) Supports a program designed to harass pinnipeds (i.e., sea lions) in the Rogue River estuary. Given ongoing projects and existing funding streams, no additional ODFW funds would be needed to meet these recommendations. Although in the staff-proposed Rogue Stratum alternative predation is not considered limiting factor, cormorant and pinniped deterrence work would likely be done anyway as a useful tool for salmon fishery management. Overall, no change in costs or staffing would be incurred by either of these alternatives.

Under the advisory committee alternative for the Coastal Stratum proposed in the plan, ODFW would need to make a determination if it would be feasible to improve fish passage at the partial natural barrier in the South Fork of the Chetco River. This determination would be business as usual and would involve no additional costs. However, if fish passage improvement were determined to be feasible, costs may be incurred in carrying out that effort. ODFW does not presently have cost estimates for these possible actions. There would be no additional costs associated with the ODFW staff alternative for the Coastal Stratum.

ODFW will also have to work cooperatively with the USACE on reservoir management issues in the Rogue River Basin, particularly to increase the likelihood that habitat management activities will be successful. USACE will be requested to revise reservoir management policies and practices, and will also be requested to complete some additional assessments of reservoir management strategies. These requests could probably result in additional expenses for the USACE (a federal agency), to be determined in discussions between USACE and ODFW, but would be business as usual for ODFW staff and involve no additional costs.

There are no mandates to other state agencies in the Rogue Fall Chinook Conservation Plan that will require additional expenditures or addition of manpower by those agencies. Commitments by other agencies that may help advance the goals of the plan will be determined by those agencies, consistent with their statutory missions and legislatively approved budgets.

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 mandated as a consequence of the adoption of these rules. The plan's habitat strategy is expected to provide resources to community-based conservation entities, such as watershed councils, soil and water conservation districts, and other community groups consistent with, and as directed by the Oregon Plan for Salmon and Watersheds.

C. The public could be affected by the adoption of these rules as follows: Regardless of the adopted alternative, no new reporting requirements are proposed for any business or the public in general. Consequently, there are no compliance costs for business or the public associated with reporting requirements for this plan, except for some minor reporting costs incurred by ODFW, as indicated above.

No new state land or water use regulatory programs are established in the Rogue Fall Chinook Conservation Plan, and therefore no adverse economic impacts due to land or water regulatory changes are expected as a result of adoption of these rules. The plan reiterates existing commitments to enforce current regulatory programs related to all aspects of natural resource management, particularly land use and fishery harvests. Furthermore, the Rogue Fall Chinook Conservation Plan is completely consistent with Oregon's management philosophy regarding regulation and enforcement of laws on private lands. Additional cooperative conservation stewardship actions on private lands will be achieved only with the willing participation of private landowners in non-regulatory settings. ODFW will support more effective financial and/or technical support to private landowners to encourage voluntary participation in cooperative conservation actions, such as effective habitat restoration and improvement projects.

Harvest management of the commercial and recreational salmon fisheries in the ocean as outlined by the Pacific Fishery Management Council's (PFMC) Salmon Fishery Management Plan (FMP) would not be affected by implementation of the Rogue Fall Chinook Conservation Plan. With the exception that during years when freshwater returns are forecasted to trigger conservation criteria for adult abundance within the Rogue aggregate populations, or within the Chetco population area, ODFW would recommend additional harvest restrictions for fisheries operating in the Klamath Management Zone Area. It is possible, though unlikely, these recommendations could lead to reduced ocean salmon harvest allocations.

Inland recreational fisheries for Rogue fall Chinook salmon are managed by ODFW. Harvest management strategies are intended to maintain harvest opportunities and positive economic impacts in the long run. On one hand, fishing guides, tackle shops, lodging providers, restaurants, and other angler-supporting businesses may be negatively impacted on certain years if angler effort decreases in response to decreased opportunities that may occur during years when freshwater returns are forecasted to trigger conservation criteria. On the other hand, there could be economic benefits, in the form of greater recreational fishing opportunity and associated expenditures, resulting from increased freshwater returns that could be influenced by actions in this conservation plan.

At the time this statement was written, ODFW had received no information that adoption of the proposed plan would adversely affect the kinds of businesses mentioned in the previous paragraph who provide goods and services to anglers who fish for Rogue fall Chinook salmon.

It should be noted that this conservation plan would remain in effect regardless of SMU status, because ocean survival rates of fall Chinook salmon are cyclical. The primary non-manageable limiting production factor is marine survival rates associated with variable ocean conditions. Thus, the SMU could exceed desired status for a period of time, and subsequently drop below desired status for a period of time.

Among the public comments were requests for reduced hatchery production in the Chetco population area. Any alterations in hatchery production would be designed to maintain desired status for the affected population of fall Chinook salmon. Furthermore, ODFW projects other management measures will negate the possibility of reductions in hatchery production of fall Chinook in the Chetco population area, and that such reductions would be considered only as a last resort.

The plan is written to be fully compatible with legislative direction on the goals of fish and wildlife management in Oregon.

Businesses potentially affected by these rules are believed to be "small business."

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.

### **References**

Draft Rogue Fall Chinook Rule Concepts for Consideration by the Oregon Fish and Wildlife Commission (September 12, 2012). Oregon Department of Fish and Wildlife. Salem, Oregon.

Conservation Plan for Fall Chinook Salmon in the Rogue Species Management Unit. Draft of September 12, 2012. Oregon Department of Fish and Wildlife. Salem, Oregon.

Pacific Fishery Management Council. Pacific Coast Salmon Plan Fishery Management Plan For Commercial And Recreational Salmon Fisheries Off The Coasts Of Washington, Oregon And California As Revised Through Amendment 14. March, 1999. Portland, Oregon.