

Secretary of State

NOTICE OF PROPOSED RULEMAKING HEARING*

A Statement of Need and Fiscal Impact accompanies this form

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ARCHIVES DIVISION
SECRETARY OF STATE

Department of Fish and Wildlife

635

Agency and Division

Administrative Rules Chapter Number

Michelle Tate

(503) 947-6044

Rules Coordinator

Telephone

Department of Fish and Wildlife, 4034 Fairview Industrial Dr. SE, Salem, OR 97302

Address

RULE CAPTION

Treaty Indian Fisheries In the Columbia River.

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

Hearing Date	Time	Location	Hearings Officer
2-10-17	8:00 a.m.	9000 SW Washington Square Road, Tigard, OR 97233	Oregon Fish and Wildlife

RULEMAKING ACTION

Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

ADOPT:

Rule Division 635-041 OARs, as determined justified.

AMEND:

Rule Division 635-041 as determined justified.

REPEAL:

Rule Division 635-041 as determined justified.

RENUMBER: Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.**AMEND AND RENUMBER:** Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.**Statutory Authority:**

ORS 183.325, 506.119

Other Authority:**Statutes Implemented:**

ORS 506.129, 507.030

RULE SUMMARY

These amended or adopted rules, as determined justified, will ensure consistent regulatory language and enforcement of Treaty Indian fisheries on the Columbia River by State and Tribal authorities. 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 negative economic impact of the rule on business.

02-10-2017 Close of Hearing	Michelle Tate	michelle.l.tate@state.or.us
Last Day (m/d/yyyy) and Time for public comment	Rules Coordinator Name	Email Address

*The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation.

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STATEMENT OF NEED AND FISCAL IMPACT
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Department of Fish and Wildlife
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635
Administrative Rules Chapter Number

Treaty Indian Fisheries In the Columbia River.

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 041, related to Treaty Indian fisheries in the Columbia River.

Statutory Authority:

ORS 183.325, 506.119

Other Authority:

Statutes Implemented:

ORS 506.129, 507.030

Need for the Rule(s):

As part of ongoing efforts to ensure consistency in regulations between the State of Oregon and governments of the Columbia River Treaty Tribes, the parties to US v. Oregon agreed in 2016 to modified rule language. Adoption of new rule language will ensure consistent regulatory language and enforcement by State of Oregon and Tribal authorities.

Documents Relied Upon, and where they are available:

1. Staff report for the Oregon Fish and Wildlife Commission hearing of February 10, 2017.

A copy of the rules and the other documents relied upon for this rulemaking [the above document] are available from the Oregon Department of Fish and Wildlife, Fish Division, Second Floor, 4034 Fairview Industrial Drive SE, Salem, Oregon 97302-1142, between the hours of 8:00 a. m. and 4:00 p.m., on normal working days, Monday through Friday.

Fiscal and Economic Impact:

See attached FIS.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

See attached FIS.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small business and types of businesses and industries with small businesses subject to the rule:

See attached FIS.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

See attached FIS.

c. Equipment, supplies, labor and increased administration required for compliance:

See attached FIS.

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

Many tribal fishers operate small businesses based upon their fishing activities. Fish processors and distributors purchase and sell tribally caught fish during some seasons. These rules do not affect overall catch levels or opportunities to land and sell fish from the Columbia River. As a result, there are no impacts on small businesses associated with these rules. Tribal fishers who may be affected by the regulations have been involved in development and approval of identical rules in various tribal laws enacted by individual tribal governments.

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

The draft new rule language was developed in government-to-government discussions between the State of Oregon and Columbia River treaty tribes under the auspices of the US v. Oregon court case.

<u>02-10-2017 Close of Hearing</u>	<u>Michelle Tate</u>	<u>michelle.l.tate@state.or.us</u>
Last Day (m/d/yyyy) and Time for public comment	Printed Name	Email Address

**Economic Impact Statement for the February 10, 2017 Hearing
In the Matter of Rules Relating to Treaty Indian Fisheries
In the Columbia River**

As part of ongoing efforts to ensure consistency in regulations between the State of Oregon and governments of the Columbia River Treaty Tribes, the parties to US v. Oregon agreed in 2016 to modified rule language. Adoption of new rule language will ensure consistent regulatory language and enforcement by State of Oregon and Tribal authorities. Fiscal and economic impacts discussed below pertain to the proposed rules at the time of the writing of this FIS.

Statement of Cost of Compliance

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

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

A. State agencies that could be affected by these rules are the Oregon Department of Fish and Wildlife (ODFW) and the Oregon State Police (OSP). No significant changes from the current levels of these agencies' staffing, expenditures, or revenues are expected to result from the adoption of these particular rules.

B. No units of local government would be affected by the proposed rules.

C. The public is affected by the proposed rules.

For subsistence fishing gear, commercial fishing gear, and sturgeon setline fishing gear, tribal fishers must place identification of the owner's tribal affiliation and enrollment number in the locations prescribed by the proposed rules. For the most part, tribal fishers are already employing some type of identification. The focus of the proposed rules is to ensure that identification is placed consistently in the same locations on all applicable gear. While it is expected that most tribal fishers will not be economically impacted by the rules, some tribal fishers may experience small costs related to purchase of means of identification.

Tribal fishers will have to present their valid identification cards to any federal, state, or tribal officer upon request. Identification cards are already furnished by each tribe and this rule amendment will have no economic impact on tribal fishers.

Amended rules also clarify language on the release of undersized fish for tribal commercial and subsistence sturgeon fisheries and will have no economic impact on tribal fishers.

These rules will not affect overall catch levels or opportunities to land and sell fish from the Columbia River and thus fish processors and distributors who purchase tribally caught fish will not be impacted.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:

Tribal fishers, who may operate small businesses related to their commercial fishing activities, are subject to the rules. The exact number of small businesses associated with tribal commercial fishing is not known, but is estimated to be a few hundred. Fish processors and distributors who purchase tribally caught fish are indirectly affected by the rules. There were six such processor/distributors in 2015.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

None.

c. Equipment, supplies, labor and increased administration required for compliance:

It is expected that the majority of tribal fishers already use identification meeting rule requirements, though some tribal fishers may need to acquire means of identification to comply. The means of identification could be a tag, lashed-on piece of wood, etc. and would likely be low to no cost.

The rules are believed to be fully compatible with legislative direction on the goals of fish and 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.