

Fish Passage Task Force Rule Revision Subcommittee Process

A subcommittee of the Fish Passage Task Force was convened to hold several public meetings to discuss rule revision proposals and make recommendations to the full Fish Passage Task Force. The Department appreciates the time and effort provided by the members of the Fish Passage Rule Review Subcommittee as well as stakeholders that provided guidance, review, data, and other assistance. This document summarizes the participants in this process and the content of each meeting.

Participants

Fish Passage Task Force Members

Steve Albertelli, Water Users
Ken Bierly, Public-At-Large
Bill Cunningham, Public-At-Large
Fred Messerle, Water Users
Kelly Moore, Fishing and Conservation
April Snell, Water Users
Zak Toledo, Public-At-Large
Terry Turner, Fishing and Conservation

ODFW Staff

Greg Apke, Fish Passage Coordinator
Pete Baki, ODFW-ODOT Liaison
Christopher Claire, Assistant District Fish Biologist Coos, Coquille Ten Mile Watershed
Renee Coxen, Coastal Implementation Coordinator
Karen Hans, Good Neighbor Authority Coordinator
Josh Hanson, Fish Passage Assistant
Katherine Nordholm, Fish Screening and Passage Coordinator
Alan Ritchey, Fish Screening and Passage Program Manager
Kregg Smith, Fish Division Senior Policy Analyst
Joel Watts, Fish Passage Engineer
Scott Janssen, Fish Passage Engineer
Dr. Ben Clemens, Research Project Leader
Tom Stahl, Conservation Program Manager
Tim Porter, High Desert Assistant District Fish Biologist
Winston Morton, Fish Habitat Assistant Project Leader
Brett Hodgson, High Desert District Fish Biologist, retired
Adrienne Averett, ESA Implementation Coordinator
Ryan McCormick, Chief Engineer
Michele Weaver, ESA Program Specialist
Alexis Harrison, Native Fish Investigation Project Leader
Mike Gray, Charleston Coos Bay District Fish Biologist

Agencies

Aaron Beavers, National Marine Fisheries Service
Jean Castillo, National Marine Fisheries Service
Jeff Brown, National Marine Fisheries Service
William Brennan, Farm Production and Conservation-Natural Resource Conservation Service
Andrea Celentano, Oregon Department of State Lands
Cash Chesselet, Oregon Department of Transportation
Gary Diridoni, Natural Resource Conservation Service
Alan Gillette, Oregon Department of Transportation
Ann Gray, US Fish and Wildlife Service
Julie Harper, Animal and Plant Health Inspection Service
Chris Laity, Tillamook County
Suzy Liebenburg, Natural Resource Conservation Service
John Raasch, Oregon Department of Transportation
Devin Simmons, Oregon Department of Transportation
Mike Ward, Natural Resource Conservation Service
Thomas Whittington, Oregon Department of Forestry
Katlyn Woodruff, Natural Resource Conservation Service

Participants

Nick Ackerman	James Fraser
Kelly Albers	Megan Garvey
Finlay Anderson	Craig Herman, Cattleman's Association
Amanda Astor	Denise Hoffert
Jeremy Austin, Oregon Natural Desert Association	Amy Horstman
Brian Bangs	Ed Hughes, Coos Watershed Association
Nolan Banish	Jim Hunt
Brian Barney	Jefferson Jacobs
Seth Barnes	Ben Kirsch, Deschutes River Alliance
Russ Bartlett, River Design Group	Gordon Kurtz
Sterling Beal	Ted Labbe
Steve Brink	Craig Lacy
Vincent Bryan III	Ann Lefler
Jena Carter	Helena Linnell
Mike Champman	Steve Liske
Santana Christian	Zac Mallon, LNWC
Vaughn Collins, Northwest Hydraulic Consultants	Jillian McCarthy
Brian Cook	Jim McCarthy
Ian Courter	Kelly Moroney
Rocky Dallum	Michael Moses
Molly Dawson	David Moskowitz
Mel Dunne	Dawn Nolan
Conrad Ely	Mike Ogle
	Shaun Pigott
	Brian Posewitz, WaterWatch
	Liz Ransom

Mark Rogers
Bruce Scanlon
Rob Schab
Dave Shively
Doris Small (DFW)
Pad Smith (DFW)
James Stupfel
Michael Tripp

Meghan Tuttle
Dick Vanderschaaf
Brenna Vaughn, NWHA
Sharon Waterman
Jeremy Webster
Garth Wyatt
April Zohn

Agreement Reached

Consensus was reached on the following items during the Oct. 7, 2022 Joint Rules Revision Subcommittee --- Fish Passage Task Force Meeting:

- ✓ Agreement reached on Draft Rules as presented and with modifications made during the Meeting by the Rules Subcommittee. The Task Force adopted the Subcommittee's motion (6 yes votes – 1 no vote) with a report to the Commission that the following issues require future consideration (see below).
- ✓ Recommendation that the Department develop a guidance document to assist the public with education and implementation of the new administrative rules with a focus on fish passage design criteria implementation.

Agreement Not Reached

Consensus was not reached on the following items:

- OAR 635-412-0005 (4) – Including of consideration of “delay” in considering fish passage;
- 635-412-0005(10)(b)(A)(i) – The 30 percent threshold for dams has a different standard for dams than other artificial obstructions;
- OAR 635-412-0005(10)(b)(A)(ii) – Language relating to replacement, repairs, patches, and modifications;
- Inclusion of a new Fish Passage Task Force member to provide Tribal representation;
- Consideration of hydroelectric as a form of green energy; and
- Adjusting mitigation criteria to allow for benefits to native migratory fish not impacted by the artificial obstruction.

Public Meetings and Topics of Discussion

A record of all public meetings, locations, dates, agendas, and meeting minutes are located at:

https://www.dfw.state.or.us/fish/passage/admin_rules_init.asp . The table below summarizes the major topics covered at each of the meetings.

Meeting	Focus
March 9, 2021	<p>Process overview, schedule, and public comment period</p> <p>Difference between Oregon Administrative Rules and Fish Passage Guidance Document</p> <p>List of preliminary potential issues to address presented</p> <p>Discussion of additional items to address included:</p> <ul style="list-style-type: none"> • Additional trigger discussion regarding maintenance of dams • In the artificial obstruction definition, change the word device to impediment • Add a definition of net benefit and appreciable benefit • Revise net benefit analysis definition to include quality and/or quantity not just quality or quantity • Nonphysical obstructions (changes to flow or thermal conditions) • Addition of a policy and intent section • Definition of “trigger” • Consideration of how renewable resources (hydropower) can be part of future carbon neutral operations • Fundamental change of permit status section should include “where denial of the regulatory approval would result in the present of the artificial obstruction in waters of the state • Clarifying whether preference will be given to anadromous native migratory fish • Standardizing approach for evaluation of historical extent of native migratory fish • Definition of fundamental change in permit status • Preference to not prioritize anadromous fish over resident trout • Define mitigation banking and describe mitigation bank development • Development of a guidance document in addition to the rule changes
March 23, 2021	<p>Public Comments:</p> <ul style="list-style-type: none"> • Available funding is not adequate for all of the necessary projects. • Definition of appreciable benefit would be appreciated. • A fair and balanced approach to fish passage requirements for tide gates on constructed agricultural drainage ditches. <p>Draft OAR Revisions</p> <p>635-412-0001 (Policy and Intent)</p> <p>635-412-0005 – Definitions</p> <p>635-412-0010 – Task Force</p> <p>635-412-0015 – Prioritization</p>
May 18, 2021	<p>Draft OAR Revisions</p> <p>635-412-0001 (Policy and Intent)</p> <p>635-412-0005 – Definitions</p> <p>635-412-0010 – Task Force</p>
June 1, 2021	<p>Discussion of Public Comments</p> <p>General Comments</p> <p>635-412-0001 - (Policy and Intent)</p>

	635-412-0005 – Definitions Section
June 4, 2021	Fish Passage Task Force Meeting
June 15, 2021	Discussion of Public Comments General Comments 635-412-0001 - (Policy and Intent) 635-412-0005 – Definitions Section 635-412-0010 – Task Force
June 29, 2021	Discussion of Public Comments 635-412-0005 – Definitions Section 635-412-0010 – Task Force
July 13, 2021	Discussion of Public Comments 635-412-0005 – Definitions Section 635-412-0010 – Task Force
July 27, 2021	Meeting on House Bill 2298
August 10, 2021	Discussion of Public Comments 635-412-0005 – Definitions Section 635-412-0010 – Task Force
August 24, 2021	Discussion of Public Comments 635-412-0005 – Definitions Section
September 14, 2021	House Bill 2298 Work Session
September 28, 2021	Renewable Energy Alternatives - Focused Discussion Discussion of Public Comments 635-412-0005 – Definitions Section
October 12, 2021	Pushup Dams - Focused Discussion Discussion of Public Comments 635-412-0005 – Definitions 635-412-0010 – Task Force 635-412-0015 – Prioritization
October 15, 2021	Fish Passage Task Force Meeting
November 2, 2021	635-412-0020 – Fish Passage Approval Section 635-412-0025 – Waivers and Exemptions Section
November 23, 2021	635-412-0030 – Protest Section 635-412-0035 – Fish Passage Criteria Section
December 15, 2021	Fish Passage Task Force Meeting
December 14, 2021	Tide Gate Function and Design Considerations 635-412-0035 – Fish Passage Tide Gate Criteria 635-412-0035 – Low Water Ford Criteria 635-412-0040 – Mitigation Criteria Section
January 11, 2022	635-412-0035 – Low Water Ford Criteria 635-412-0040 – Mitigation Criteria Section
February 22, 2022	Parking Lot Issues Definitions Task Force Waivers & Exemptions Design Criteria Mitigation Criteria

	Others
February 25, 2022	Fish Passage Task Force Meeting
March 15, 2022	Parking Lot Issues Definition of “No Appreciable Benefit” Waiver, Net Benefits and Mitigation for Dams
April 5, 2022	Parking Lot Issues Fish Passage Triggers for Dams
May 19-20, 2022	Fish Passage Task Force Meeting
October 7, 2022	Joint Meeting with Rules Subcommittee and Fish Passage Task Force Final consideration and recommendation to Department and Commission