



AGENDA ITEM SUMMARY

BACKGROUND

The Private Forest Accord (PFA) Mitigation Fund was established in the 2022 Legislative Session (Senate Bills 1501 and 1502; House Bill 4055) as an outcome of a historic agreement between timber and conservation groups, known as the Private Forest Accord. The Private Forest Accord legislation required changes to the Forest Practices Act that increase protections for streams and aquatic species' habitats while allowing forest practices to proceed on private lands in Oregon. The Private Forest Accord legislation called for the development of a Habitat Conservation Plan (HCP) and subsequent Incidental Take Permit (ITP) to cover certain forest practices and identify conservation measures and assurances for certain aquatic species, consistent with the federal Endangered Species Act. The Private Forest Accord Mitigation Fund's purpose is to fund projects that benefit the aquatic fish and wildlife species covered by the anticipated HCP, serving as an offset to the impacts of certain forest practices on private lands.

The Oregon Department of Forestry (ODF) is responsible for the development of the HCP and the applicant for the ITP, on behalf of the Oregon private and local government forest landowners as well as any individual Oregon tribes seeking to opt-in. ODF anticipates finalizing the HCP and obtaining the ITP no later than December 31, 2027. The species covered by the anticipated HCP will include: all native salmon and trout, bull trout, mountain whitefish, pacific eulachon/smelt, green sturgeon, Columbia torrent salamander, Southern torrent salamander, coastal giant salamander, Cope's giant salamander, and the coastal tailed frog.

In the 2022 PFA legislation, the PFA Mitigation Fund was established as a subaccount of the Oregon Conservation and Recreation Fund, with moneys appropriated to the Oregon Department of Fish and Wildlife (Department) for deposit in the subaccount. As part of the 2022 PFA legislation, the Department was appropriated \$10 million General Fund for deposit into the subaccount and as per HB 4055 an annual deposit of \$2.5 million in timber harvest tax revenue is allocated into the PFA Mitigation Fund, an amount that is anticipated to increase to \$5 million once the ITP is finalized by Oregon Department of Forestry, the US Fish and Wildlife Service (USFWS), and the National Marine Fisheries Service (NMFS).

The 2022 PFA legislation gave the Oregon Fish and Wildlife Commission (Commission) the authority to establish by rule a PFA Grant Program for the purpose of funding projects that mitigate impacts of forest practices, consistent with the anticipated HCP. PFA Mitigation Grant Program efforts will focus on the following categories of mitigation measures identified in the HCP:

- Restoration of degraded habitat to natural condition/function or to a condition likely to be resilient to projected changes
- Land and water preservation

- Enhancement of habitat
- Threat reduction or elimination
- Creation of new habitat or new populations
- Translocation of affected individuals or family groups to establish new or augment existing populations
- Recovery of species to formerly occupied and still suitable or enhanced habitat.

The PFA legislation established a twelve-member Mitigation Advisory Committee (MAC) comprised of seven voting members and five ex-officio, non-voting members. The PFA legislation requires three of the voting members to represent the timber industry, three voting members to represent nongovernmental organizations that promote conservation of freshwater aquatic habitat, and the seventh voting member from the Oregon Conservation and Recreation Fund advisory committee. The non-voting members represent the Department, ODF, Oregon Watershed Enhancement Board, USFWS, and NMFS. The MAC will make funding recommendations to the Commission and the Department on grant awards that will most effectively mitigate the impacts of forest practices on species covered by the HCP. The voting members were appointed by the Governor in October 2022, and the MAC began meeting in February 2023. Meetings of the MAC are publicly noticed and open to the public.

The PFA Grant Coordinator was hired in December 2022 and has moved quickly to convene the MAC, worked closely with the MAC to develop draft administrative rules to guide the implementation of. The PFA Grant Coordinator is also working with the MAC to build the foundational documents, plans, and systems to administer the new grant program. An additional position, the PFA Staff Assistant, is currently in the process of recruitment and will provide additional administrative capacity to administer what is now ODFW's largest grant program.

PUBLIC INVOLVEMENT

The MAC holds regularly scheduled meetings open to the public and includes time on the agenda for public comments. Meeting recordings, minutes, and draft documents are posted on the newly developed [PFA webpage](#). The ODFW Habitat Division staff have also presented to watershed councils and other constituents to raise awareness of the PFA Grant Program, and the Department has created a notification list server of prospective applicants and interested parties. The Department and the MAC will continue to develop a robust public engagement strategy to ensure broad and robust awareness of the funding opportunities provided by this program.

In addition to these broad outreach efforts about the PFA Mitigation Grant program, the MAC considered the draft rules at its July 12, 2023, meeting and heard comments from the public on the draft rules. The Department published notice of the proposed rulemaking (Attachment 2) and solicited public input on the proposed administrative rules through the notification list server (email) and through a posting on the Department's PFA webpage. Additionally, the public had an opportunity to provide comment prior to (in writing) or (orally) during the hearing that occurs at the August Commission meeting.

ISSUE

Establishing administrative rules to guide implementation of the PFA Mitigation Grant Program

ANALYSIS

Adopting administrative rules is required to establish a Private Forest Accord Mitigation Grant Program. These rules will guide how the MAC and Department solicit, review, and award funding under the program.

To develop the draft rules, the MAC formed a working group within its membership to review the administrative rules, and the full committee reviewed and endorsed the administrative rules at their July 12, 2023 meeting, recommending Commission adoption.

In development of the rules, staff cross referenced with similar internal and external grant programs (e.g., Oregon Conservation and Recreation Fund, ODFW Access and Habitat, ODFW Restoration and Enhancement, and Oregon Watershed Enhancement Board), reviewed drafts with Department staff, and engaged interested stakeholders. Since the initial draft rules were created, various revisions have been posted on the PFA Mitigation Grant Program webpage, encouraging early public involvement and comment. Additional email notifications were sent directly to constituents (e.g., Oregon Coalition of Land Trusts, Conservation Districts, Cooperative Extension, and private landowners).

The draft administrative rules are provided in Attachment 3 and address the purpose of the fund, the duties of the MAC, the different grant solicitation pathways, the application process, project eligibility, evaluation, and standard content for grant agreements. Public correspondence received as of July 20, 2023, is provided in Attachment 6.

Beyond the administrative rules, the Department recognizes the need for guiding materials to help applicants understand the program and be successful in pursuing this funding. To that end, staff and the MAC have developed other PFA Mitigation Grant Program guiding documents alongside the administrative rules such as the draft Expenditure Framework, which is provided in Attachment 4 as an example. A subgroup of MAC members are reviewing these documents, and staff are also reaching out to a number of groups to gather feedback on these materials before they are finalized. A copy of the MAC Operating Procedures that were adopted by the committee are provided in Attachment 5.

OPTIONS

1. Adopt staff recommendations to create a new Division 097 to implement the PFA Mitigation Grant Program.
2. Modify staff recommendations to create a new Division 097 to implement the PFA Mitigation Grant Program.

STAFF RECOMMENDATION:

Option 1.

DRAFT MOTION:

I move to adopt rules for a new Division 097 to implement the Private Forest Accord Mitigation Grant Program as proposed by staff and shown in Attachment 3.

Effective Date: Upon filing.