

## Summary of Proposed Rule Changes

### Salmon & Trout Enhancement Program and Salmon Trout Advisory Committee

In 2021, staff were directed to review and update the Oregon Administrative Rules (OAR) for the Salmon & Trout Enhancement Program (STEP) program to align the program with current policies and plans that govern the management of salmon and trout resources and develop rules to govern representation on and meetings of the Salmon Trout Advisory Committee (STAC).

The administrative rules governing STEP have not been updated since 1986. Since then, the department has adopted policies and plans that govern the management of fisheries resources including the Native Fish Conservation Policy, Hatchery Management Policy, Climate and Ocean Change Policy, and a variety of Conservation and Recovery Plans.

To help aid in the understanding of the proposed rules, staff have developed the following summary information that describes the changes for each section of the rules. As you read this summary it may be helpful to have the current Draft STEP Program rules as a reference.

#### **635-009-0095 Definitions**

The definitions of acclimation, committee, mark, and stocking are added to clarify the proposed rules. The definitions for commission, department, rehabilitation, STEP, and supplementation are deleted in this section since these five definitions are listed in Oregon Revised Statute (ORS) 496.430 and/or OAR 635-007-0501 and apply to these rules.

The definition of enhancement for the purpose of these rules was updated to be consistent with the definition listed in ORS 496.430.

The term "Educational Project" is being removed because education under STEP is more than just school and youth programs.

The terms "Broodstock Development Project" and "Life Cycle" are removed because these terms are not used in the proposed updated rules.

#### **635-009-0096 Salmon Trout Advisory Committee (STAC)**

This is a proposed new section to the rules because there are no rules specific for STAC under the current rules. These proposed rules define the number of STAC members, qualifications to be on the committee, and what regions the committee members will cover. The new rules will also state that STAC will select officers and may form sub-committees. The rules also state that STAC members may not receive compensation for service as a STAC member except as provided under ORS Chapter 292. A previous draft of these rules proposed an option to fill a vacant STAC position with a public-at-large. After receiving feedback from STAC members and members of the public, the option to fill a vacant STAC position with a public-at-large has been removed from the draft rules.

#### **635-009-0097 Meetings**

This is a proposed new section to the rules because there are no rules about STAC meetings in the current rules. These proposed rules clarify that all meetings are open to the public and specify the frequency of meetings.

### **635-009-0100 STEP Policy and Goals**

There are no proposed changes to the policy and goals other than the addition of ORS 496.435 (Policy to Recover and Sustain Native Stocks) which shall promote rehabilitating salmon and trout populations by using STEP.

### **635-009-0105 STEP Community Advisors**

This section updates the roles of department staff. These proposed changes include language on department staff providing education and training to volunteers and clarifies the department's role in reviewing STEP projects to ensure they comply with other rules, plans, and policies.

### **635-009-0106 Program Volunteers**

This is a proposed new section to the rules because there are no rules about Program Volunteers in the current rules. The proposed rule states that the department will provide training when necessary and all program volunteers must follow ODFW policies governing volunteers. It is a liability to the state if people are injured because STEP volunteers are not properly trained and/or do not follow state laws and policies.

### **635-009-0107 Propagation of fish through STEP**

This new section was developed to reflect how propagation projects currently operating through STEP must comply with the ODFW policies. These policies include the Native Fish Conservation Policy, Hatchery Management Policy, Fish Health Management Policy and Climate and Ocean Change Policy. These policies guide how we currently do business under STEP. The proposed draft STEP rules are aligning the rules with these policies.

In addition to new language, there are sections of this rule that have been derived from the current rules. The information below identifies some of the sections of the proposed rules and describes where the proposed new language was derived or incorporated from:

Section (4) "For STEP propagation projects, all eggs, fish, and any portions thereof continue to be the property of the State of Oregon" and Section (4)(a) "It is unlawful to transport, hold, handle, possess, or release eggs or fish except as specifically authorized by the department". This section was incorporated from current OAR 635-009-0140 which is being proposed for deletion (Line 348 in the Draft STEP Program OAR document). This language is included here to clarify that the fish, eggs, and portions of fish that are used in a STEP facility are the property of the State of Oregon and not of the STEP facility.

Section (4)(b) "All fish returning to a STEP propagation project must be handled and disposed of in accordance with OAR 635-007-0545(14)" replaces the original OAR 635- 009-0150 (Lines 371-388 in the Draft STEP Program rule which is being proposed for deletion). This section updates the rules so that they are consistent with the Hatchery Management Policy. This ensures that STEP facilities will use the returning fish for broodstock needs, provide fish for tribal ceremonial and subsistence use, education purposes, and other societal and ecological needs.

Section (5) "In the event of unforeseen shortages of eggs or fish, changes in facility availability or status, the department may implement revisions to a STEP project as necessary. Any revisions will be discussed with the STEP project sponsor to minimize impact to facility operations." This section was incorporated from the original OAR 635- 009-0140(4) (Line 360 in

the Draft STEP Program OAR document which is being proposed for deletion) and 635-007-0820(2) (Salmon Production Programs). This language is included here to clarify that the department can adjust egg and fish allocations as necessary but will discuss with project sponsors before doing so.

### **635-009-0110 STEP Project Application**

Proposed additions to this section updates language to currently used terminology and incorporates language about future conditions (climate change).

The information below identifies some of the sections of the proposed rules and describes where the proposed new language was derived or incorporated from:

Section(1)(d) “Including educational classroom incubators in which no more than 500 eggs may be incubated as an educational tool and all release locations must be approved by the department”. This is incorporated from the original OAR 635-009- 0125(1)(c) (Line 283 in the Draft STEP Program rule document which is being proposed for deletion) and describes educational uses of incubators in classrooms.

Section (3) provides a reference to the Oregon Revised Statue 537.142 which gives exemption for a water right to certified STEP projects even for department projects that use volunteers (if approved as a STEP project).

### **635-009-0115 STEP Project Approval**

The STEP program/projects are currently required to follow the Endangered Species Act, Hatchery Genetic Management Plans, ODFW’s Native Fish Conservation Policy and others; this proposed language clarifies that.

The information below identifies some of the sections of the proposed rules and describes where the proposed new language was derived or incorporated from:

Section (3) “Approval of projects shall be for a time period determined by the department based on the type of project” is written with no specific time periods to accommodate the variety of STEP project types. For example, a habitat improvement projects will have a shorter implementation time than a long-term propagation project.

The new proposed language throughout Section (4) provides one location for applicants of STEP projects to find what requirements they will be evaluated on. Section (4)(c) “Releases from a fish propagation project shall not exceed 100,000 fish of each species, unless authorized by the Commission or a Commission adopted plan” is incorporated from OAR 635-009-0135(2) (Line 341 in the Draft STEP Program rule document which is proposed for deletion).

Section (4)(f) “Prior to operation, any required fish screens, disease control mechanisms, and isolation facilities are in place and operating” is language that is found in OAR 635-007-0730. Section (4)(g) “The fish and egg production meets criteria shown in previously approved programs for release size, time, and mark rate, and disease control regulations will be met” is language that is found in OAR 635-007-0820, these proposed sections are part of good fish culture practices that should be essential for propagation of fish.

Section (6 a-e) describes the specific criteria that ODFW will use when determining if a project

should be approved. This new section incorporates language from OAR 635-007-0650(5) Fish Propagation License Required and will make the rule consistent with the current policy.

### **635-009-0120 STEP Revocation of Project Approval**

The department needs to assure that any STEP project follows the provisions of OAR 635-009-0115 (described above).

The current rule has a revocation process, but the proposed updated language allows the department the opportunity to amend or remove a project if the project sponsor or group is not following provisions identified in OAR 635-009-0115 or participating with the department's Volunteer Code of Conduct. This section also provides STAC an opportunity to provide objective recommendations to the department.

### **Why proposed deletion of 635-009-0125 through 635-009-0150 Egg Incubation/Fish Program rules**

#### **635-009-0125 Egg Incubation and Fish Program Project Proposal**

Section (1) is proposed for deletion because this lists definitions that are covered in the proposed draft rules (635-009-0095, Lines 14-48 in the Draft STEP Program rule document). Removal of this section will eliminate redundancy of the definitions.

Sections (2 & 3) provide information of what should be in the STEP project applications. These sections are proposed for deletion because under the proposed rule this would be covered by 635-009-0110(2) (Line 183 in the Draft STEP Program rule document).

#### **635-009-0130 Egg Incubation and Fish Program Project Duration**

Under the current rule this section establishes a length of time for a STEP project that is approved (typically one Life Cycle). Under the proposed rules, the approval timeframe is covered by proposed OAR 635-009-0115(3) "Approval of projects shall be for a time period determined by the department based on the type of project." (Line 206 in the Draft STEP Program rule document).

#### **635-009-0135 Egg Incubation and Fish Program Number of Fish Released**

Section (1) "The number of fish authorized for release" is proposed for deletion because it is covered by proposed OAR 635-009-0115(1) (Line 202 in the Draft STEP Program rule document) and proposed OAR 635-009-0115(4g) (Line 226 in the Draft STEP Program rule document). These proposed rules point to department policies like Conservation Plans (which sets the level of hatchery fish releases into specific basins) and that STEP fish and egg production meet criteria shown in other approved programs.

Section (2), fish propagation projects shall not rear/release more than 100,000 fish without Commission approval is proposed for deletion because it is covered by proposed OAR 635-009-0115(4c) (Line 220 in the Draft STEP Program rule document).

#### **635-009-0140 Egg Incubation and Fish Program General Considerations**

Section (1), it is unlawful to transport/possess fish/eggs without a department permit is proposed for deletion because it is covered by proposed OAR 635-009-0107(4a) (Line 157 in the Draft STEP

Program rule document).

Section (2 & 3), use of wild fish in broodstock is proposed for deletion because this is covered by the department's conservation plans and Hatchery Genetic Management Plans.

Section (4), in the event of egg shortages the department will adjust numbers of eggs is proposed for deletion because this is covered by proposed OAR 635-009-0107(5) (Line 162 in the Draft STEP Program rule document).

Section (5 & 6), all eggs/fish are property of the department and must be disposed as directed by department is proposed for deletion because this is covered under proposed OAR 635-009-0107(4) (Lines 155-161 in the Draft STEP Program rule document).

### **635-009-0150 Egg Incubation and Fish Program Disposal of Fish and Fish Products**

This section is proposed for deletion because the disposition of fish is covered under proposed OAR 635-009-0107(4) (Line 160-161 in the Draft STEP Program rule document).