

# **Summary of updates to the Oregon Administrative Rules for the Salmon Trout Advisory Committee and Salmon-Trout Enhancement Program**

**5/24/2023**

The Oregon Fish and Wildlife Commission was advised of the development of Oregon Administrative Rules (OARs) for the Salmon and Trout Advisory Committee (STAC) at their November 2020 meeting. In addition, staff was directed by Fish Division leadership to review and update the Salmon and Trout Enhancement Program (STEP) OARs that were last updated in 1986. Updates to these OARs is necessary to adapt to listings under the Endangered Species Act and new policies and plans. Since the OARs were created, ODFW has adopted policies and plans that govern the management of fisheries resources including the Native Fish Conservation Policy, ODFW Hatchery Management Policy, Climate and Ocean Change Policy, and a variety of Conservation and Recovery Plans. To facilitate the process ODFW staff and members of the STAC began working on the OARs in 2021. This committee included two STAC members, three STEP Biologists, the STEP Coordinator, Recreational Fisheries Program Manager, and Fish Division Rules Coordinator. The sub-committee also received input from the ODFW Fish Propagation and Conservation and Recovery programs.

Throughout the OAR development process there have been multiple opportunities for the public to comment on the proposed updates.

Drafts of the rules were presented, and comments were received during:

- Salmon Trout Advisory Committee meetings in February, May and October (2022) and May (2023)
- South Coast Anglers (Coos Bay) meeting in August of 2022
- Oregon Anglers Alliance meeting in September of 2022
- Discussed draft OARs with Trout Unlimited staff in December of 2022
- Gardiner/Reedsport/Winchester Bay STEP meeting in December of 2022
- Multiple ODFW staff conversations with concerned individuals
- A public webinar in February of 2023
- Letter sent out with draft OARs to all 9 federally recognized tribes in Oregon
- ODFW met with Tribal Natural Resources working group in April of 2023

The committee will present the latest draft OAR updates during:

- The Oregon Fish and Wildlife Commission during a fall meeting in 2023

When reading OARs there is a specific style to how the rules must be written and organized. For example, if new language is being proposed then in the draft OARs the text is bolded and underlined, if a language is being removed, then the text is given a strikethrough. There may be cases where text is being moved from one section to another and will show up bolded and underlined in one section and shown a

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

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

The definitions of acclimation, committee, mark, and stocking are added to clarify the proposed OARs. The definitions for commission, department, rehabilitation, STEP, and supplementation are being removed. However, these five definitions are listed in ORS 496.430 and/or OAR 635-007-0501 and are applicable to these OARs.

The definition of enhancement for the purpose of these OARs was updated to be consistent with the definition that is 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” will be removed because these terms are not used in the proposed updated rules and have been replaced with current terminology.

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

This is a proposed new section to the OARs because there are no rules specific for STAC under the current OARs. 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 Oregon Revised Statute (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 OARs because there are no rules about STAC meetings in the current OARs. These proposed rules would establish that all meetings are open to the public and establishes the frequency of the meetings.

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

There are no proposed changes to the policy and goals other than the addition of Oregon Revised Statute 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**

Updates the roles of Department staff. These proposed changes include language on Department staff providing education and training to volunteers. Also 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 OARs because there are no rules about Program Volunteers in the current OARs. The proposed rule states that ODFW 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 OAR that have been derived from the original OARs. The information below identifies some of the sections of the proposed OARs and describes where the proposed new language was derived or incorporated from:

Section (3)(a) combined (a)(b)(c) from the previous draft (3/9/23) all into one line stating that (3) All STEP Propagation projects must be implemented consistent with: (a) The Native Fish Conservation Policy outlined in OAR 635-007-0502 through 635-007-0509.

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 344 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 366-384 in the Draft STEP Program OAR which is being proposed for deletion). This section allows consistency with the Hatchery Management Policy, which the current STEP rules are inconsistent with. 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.” We removed the following wording from the 3/9/2023 draft “or need for management adjustments the Department may implement any revisions necessary”. This section was incorporated from the original OAR 635-009-0140(4) (Line 356 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.

### **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 OARs 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 279 in the Draft STEP Program OAR 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 already 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 OARs 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 337 in the Draft STEP Program OAR document which is proposed for deletion).

Section (4)(f) “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. “Prior to operation” was added to (4)(e)(f) since the 3/9/2023 draft of the OARs. Permit Application Process and 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 (5) we removed the wording “or to achieve compliance with Oregon laws or rules” from the 3/9/2023 draft.

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 OAR consistent with the current policy.

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

The Department has had experiences where STEP groups refused to follow state law, which is a liability to the state. The Department also needs to assure that any STEP project follows the provisions of OAR 635-009-0115 (described above).

The current OAR has a revocation process, but the proposed updated language allows the Department the opportunity to amend or remove a project if they are not following laws 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 OARs (635-009-0095, Lines 13-35 in the Draft STEP Program OAR 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 OAR this would be covered by 635-009-0110(2) (Line 181 in the Draft STEP Program OAR document).

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

Under the current OAR this section establishes a length of time for how long a STEP project is approved for (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 204 in the Draft STEP Program OAR 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 200 in the Draft STEP Program OAR document) and proposed OAR 635-009-0115(4g) (Line 224 in the Draft STEP Program OAR document). These proposed OARs 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 218 in the Draft STEP Program OAR 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 156 in the Draft STEP Program OAR 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 160 in the Draft STEP Program OAR 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 154-159 in the Draft STEP Program OAR 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 154-159 in the Draft STEP Program OAR document).