



Coos-Curry County Farm Bureau

87518 Davis Creek Lane, Bandon, Oregon 97411

May 4, 2021

Greg Apke, Coordinator
ODFW Fish Passage Program
Oregon Department of Fish and Wildlife
Salem, Oregon

RE: Comments to Fish Passage Administrative Rule Changes

Dear Mr. Apke and members of the Task Force:

Coos-Curry County Farm Bureau (CCFB) appreciates the opportunity to comment on the proposed Oregon Administrative Rules (OAR's) for Fish Passage. The proposed OAR changes adversely impact our members and lack a fair and balanced approach to fish passage. The following are the CCFB comments on the proposed OAR changes:

OAR 635-412-0005 (lines 25 – 26)

Regarding artificial obstruction, this section detail dikes, berms, and levees as artificial obstructions. Dikes, berms, and levees were never included in the original legislation. This is an overreach of the fish passage regulations. CCFB recommends that reference to dikes, berms and levees be deleted from this section.

OAR 635-412-0005 (9)(b) (lines 47 – 96)

Regarding the definition for Major Replacement, the regulation exceeds what major replacement is by defining 50% as a major replacement. It has also interpreted repairs as major replacements. For example, they have defined relining a culvert as a major replacement whereas this is actually just routine maintenance. CCFB recommends that the definition for major replacement to revised to correctly define what a major replacement is.

OAR 635-412-0005(29) (lines 102 to 104)

This section defines "In Proximity" as defined by the Oregon Water Resources Department. The regulation needs to use the definition of "In Proximity" as provided in the Statute (Oregon Revised Statute 509-580(5)). CCFB recommends that the reference to the Oregon Water Resources Department be deleted.

OAR 635-412-0005 (33) (lines 145 to 147)

This section of the Regulation defines "Net Benefit". "Net Benefit" means an increase in the overall, in-proximity habitat quality or quantity that is biologically likely to lead to an increased number of native migratory fish after a development action and any subsequent mitigation measures have been completed. This definition is used in determination of granting a waiver from fish passage. The Fish Passage Task Force has incorrectly applied "Net Benefit" by its myopic view. In the definition of net benefit, in-proximity is

included. "In-Proximity" is defined in Oregon Revised Statute 509-580(5); it states "In-proximity means within the same watershed or water basin and having the highest likelihood of benefiting the native migratory fish populations directly affected by an artificial obstruction". The Task Force focuses on each tide gate and does not consider the broader view when fish friendly tide gates are installed along the river, thus should provide for waivers for other properties in the area. Every single tide gate does not need to provide fish passage. Net Benefit Analysis performed by ODFW only look at specific artificial obstructions and not the other artificial obstructions that provide fish passage in the geographic area as "In-Proximity" requires. This can be seen time after time in Waiver request by ODOT where they will fix one culvert in another area to avoid removing the barrier in one area. CCFB recommends that ODFW Commission follow ORS 509-580(5) regarding the definition of "in-proximity" in evaluating the exemption of artificial obstructions without fish passage. Requiring fish passage tide gates on small farms and ranches do not "provide the highest likelihood of benefiting the native migratory fish population". We recommend that ODFW develop a willingness to work with farmers and ranchers on solutions and exemptions for artificial obstructions such as tide gates.

OAR 635-412-0025 (4)(c) (lines 328 to 333)

This section provides for granting of exemptions from fish passage requirements when there is no appreciable benefit. The lands drained by smaller tide gates are quite small and clearly there is no appreciable benefit to requiring fish passage for those smaller tide gates. We recommend that the regulation define "no appreciable benefit" as any tide gate that drains 500 acres or less.

OAR 635-412-0035 (4)(b) (lines 525 to 529)

This section of the regulation describes requirements for fish passage structures. Section 4(b) applies to tide gates, yet this section also requires tide gates meet the criteria in OAR 635-412-0035 (2) and (3) which pertain to dams and other types of artificial structures. CCFB recommends that the reference to OAR 635-412-0035 (2) and (3) be deleted from this section.

OAR 635-412-0035 (11)(c) (lined 638 to 670)

This section describes how alternative fish passage tide gates can get approved. It is unnecessarily complex. We recommend that this section be streamlined so that more affordable fish passage compliant tide gates can get approved. CCFB recommends that fish passage compliant tide gates of neighboring states be approved for Oregon.

OAR 635-412-0040 (2)(a) (lines 678 to 684)

This section pertains to mitigation criteria. This section places an unreasonable burden on small farmers and ranchers who have had tide gates in place for over 100 years. CCFB recommends the mitigation requirements be waived for replacement of smaller tide gates where other fish passage compliant tide gates have been install in the same area.

CCFB appreciates your consideration of the above comments. Fish passage administrative rules have hindered economical and practical replacement of agriculture infrastructure in our area.

Respectfully,


Ryan McCarthy, President