

**Fish Passage Approval Section 0020 (sorted by line 6-3-2021)**

**WaterWatch** Line 262 We would oppose any additional exemption for hydroelectric facilities/additions that would otherwise trigger fish passage requirements. Hydroelectric energy may be relatively better than some energy sources in some respects, but adding such facilities to obstructions without fish passage will tend to further entrench the obstructions (making removal less likely) and may otherwise dictate operations detrimental to fish.

**42** 48 Portland PacifiCorp 635-412- 264 "PacifiCorp owns over 3,000 megawatts of renewable energy generating facilities, including several hydroelectric projects on waters of the state of Oregon inhabited by native migratory fish. The company is also expanding its renewable generation portfolio to address climate change impacts and ultimately achieve net zero greenhouse gas emissions in service of over 2 million customers across six western states. Therefore, PacifiCorp hereby expresses its support and interest in Oregon Department of Fish and Wildlife (ODFW)'s current review and revision of the fish passage administrative rules (Oregon Administrative Rules (OAR) 635-412-) as motivated, in part, by ODFW's new Climate and Ocean Change Policy (OAR 635-900-). Addressing climate change will require prudent, near-term actions to support ODFW's mission to protect and enhance Oregon's fish and wildlife and their habitats for use and enjoyment by present and future generations. PacifiCorp supports science-based decision-making regarding fish passage in Oregon for the purposes of achieving recovering and sustainable populations of native migratory fish. PacifiCorp also notes that hydropower has a significant role to play in moving towards carbon-neutral operations in Oregon and ameliorating the causes and effects of climate change. Therefore, the climate change benefits of hydroelectricity should be considered in net benefit analyses of fish passage at hydropower facilities. PacifiCorp has gained experience implementing fish passage solutions at our federally-licensed hydroelectric projects, and we have learned that site-specific information on current and, to the extent possible, future conditions must be considered in implementation of the administrative rules to maximize long-term net benefits to native migratory fish. In certain cases, biological research has concluded that there may be little value to local fish populations in light of the expense of constructing, operating, and maintaining fish passage at an artificial obstruction. Off-site mitigation projects with lower costs than implementing fish passage at an artificial obstruction can provide a greater net benefit to at-risk fish populations, including some that may not be present at the site. The revised administrative rules should clarify that it is the intent of the state to achieve the highest net benefit to fish populations when considering the impacts of an artificial obstruction and any proposed mitigation measures. " Fish Passage Approval (-0020 (1)); Lines 264-265 Juvenile fish do not "migrate" upstream for a life cycle purpose. Edit: ".....providing passage for native migratory fish per life cycle requirements." 2021-05-04 14:06:40

196 na ODOT 635 – 412 – 0020 – Fish Passage Approval - Line 264: 264  
Add “or off-site mitigation” after existing word “providing”

157 na PacifiCorp Fish Passage Approval (-0020 (1)); Lines 264-265 264  
"Juvenile fish do not “migrate” upstream for a life cycle purpose.

Edit:

“.....providing passage for native migratory fish per life cycle requirements.””

45 51 Corvallis 635-412-0020(1) lines 264-265 264 "This rule change is important because it corrects a disturbing lack of common sense while creating provision for natural events, which is not found in the current rule. Given that the word ""historically"" (defined in 635-412-0005(27) line 99) refers to all time pre-Oregon statehood, this rule is broad beyond reasonable limits. It assumes that all artificial obstruction in historical native migratory fish habitat is a product of human involvement after the arbitrary year of 1859. It ignores the potential for natural events to alter native migratory fish habitat and their usage patterns. It also does not require that current scientific information, data, or knowledge is used when determining native migratory fish habitat; rather, the idea that migratory native fish have used it a minimum of 162 years ago. Requiring all of the historically-inhabited native migratory fish waters to comply with this rule may cause an increased financial burden for the State, private companies and individuals, and tribes without a real benefit to fish populations."

"635-412-0020(1) line 264 Historically inhabited waters of the state that have been made not passable or uninhabited due to natural, non-anthropogenic events such as landslides or earthquakes should be exempted from providing passage for native migratory fish. "

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65 71 Portland Fish Passage Approval (-0020 (1)); Lines 264-265 264  
"As currently written, fish passage is required even where the AO does not inhibit a life-cycle requirement (example: juvenile fish don't migrate upstream for life cycle purposes). "

edit 264-265 as follows: “.....providing passage for native migratory fish as may be needed to meet life cycle requirements.” 2021-05-07 08:28:09

197 na ODOT 635 – 412 – 0020 – Fish Passage Approval - Line 270 270  
"Suggest OAR language that allows department to choose to use developed process to determine fish use. A publicly available process / checkbox that includes ODFW decision on

metrics used to determine fish use. See flow chart and process developed by K. Nordholm for example of flow chart used to make fish use determinations. Metrics include: Defined stream channel, natural barrier in proximity, connection to known fish populations, drainage area size, drainage area gradient, Anthropogenic modifications, ect. A copy of this draft process is available upon request for discussion."

73 79 "Coos Bay, Oregon" Lines 273 - 289: Approval of a fish passage plan  
273 On projects utilizing Muted Tidal Regulator technology a water management plan needs to be implemented as part of the project requirements to ensure there is a facility to operate the project to design expectations with an adaptive management process included. More consideration needs to be given to low water management strategies in the WMP and less on high flow volumes since there is such a limited ability to effect high flows. in lines 273-289 add language to require WMP and adaptive management in systems utilizing MTR technology 2021-05-07 21:25:59

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42 48 Portland PacifiCorp 635-412- - "PacifiCorp owns over 3,000 megawatts of renewable energy generating facilities, including several hydroelectric projects on waters of the state of Oregon inhabited by native migratory fish. The company is also expanding its renewable generation portfolio to address climate change impacts and ultimately achieve net zero greenhouse gas emissions in service of over 2 million customers across six western states. Therefore, PacifiCorp hereby expresses its support and interest in Oregon Department of Fish and Wildlife (ODFW)'s current review and revision of the fish passage administrative rules (Oregon Administrative Rules (OAR) 635-412-) as motivated, in part, by ODFW's new Climate and Ocean Change Policy (OAR 635-900-). Addressing climate change will require prudent, near-term actions to support ODFW's mission to protect and enhance Oregon's fish and wildlife and their habitats for use and enjoyment by present and future generations. PacifiCorp supports science-based decision-making regarding fish passage in Oregon for the purposes of achieving recovering and sustainable populations of native migratory fish. PacifiCorp also notes that hydropower has a significant role to play in moving

towards carbon-neutral operations in Oregon and ameliorating the causes and effects of climate change. Therefore, the climate change benefits of hydroelectricity should be considered in net benefit analyses of fish passage at hydropower facilities. PacifiCorp has gained experience implementing fish passage solutions at our federally-licensed hydroelectric projects, and we have learned that site-specific information on current and, to the extent possible, future conditions must be considered in implementation of the administrative rules to maximize long-term net benefits to native migratory fish. In certain cases, biological research has concluded that there may be little value to local fish populations in light of the expense of constructing, operating, and maintaining fish passage at an artificial obstruction. Off-site mitigation projects with lower costs than implementing fish passage at an artificial obstruction can provide a greater net benefit to at-risk fish populations, including some that may not be present at the site. The revised administrative rules should clarify that it is the intent of the state to achieve the highest net benefit to fish populations when considering the impacts of an artificial obstruction and any proposed mitigation measures. " "Fish Passage Approval (-0020); New The addition of hydro generation to an existing dam provides a unique and positive step towards addressing climate change. The proponent of adding hydropower to an existing dam should not be required to address fish passage issues unless the new generation facility directly impacts fish passage (e.g., downstream fish passage through turbines). Propose addition to this section: "Project proponents who are neither the owner or the operator of an artificial obstruction but propose facilities, including renewable energy generating facilities ancillary to an artificial obstruction, are not subject to the fish passage requirements of this section provided such ancillary operation does not conflict with native fish migration." "

2021-05-04 14:06:40

64 70 Portland Fish Passage Approval (-0020); New - "The addition of hydro generation to an existing dam provides a unique and positive step towards addressing climate change. The proponent of adding hydropower to an existing dam should not be required to address fish passage issues unless the new generation facility directly impacts fish passage (e.g., downstream fish passage through turbines)." "NEW: "Project proponents who are neither the owner or the operator of an artificial obstruction but propose facilities, including renewable energy generating facilities ancillary to an artificial obstruction, are not subject to the fish passage requirements of this section provided such ancillary operation does not conflict with native fish migration.""

2021-05-07 08:14:43

156 na PacifiCorp Fish Passage Approval (-0020); New - "The addition of hydro generation to an existing dam provides a unique and positive step towards addressing climate change. The proponent of adding hydropower to an existing dam should not be required to address fish passage issues unless the new generation facility directly impacts fish passage (e.g., downstream fish passage through turbines).

Propose addition to this section: "Project proponents who are neither the owner or the operator of an artificial obstruction but propose facilities, including renewable energy generating facilities ancillary to an artificial obstruction, are not subject to the fish passage requirements of this section provided such ancillary operation does not conflict with native fish migration."

**71** 77 Oregon City Native Fish Society Fish Passage OARs (comments on suggestions below) "Fish passage at artificial obstructions is critical to the conservation and recovery of Oregon's native, migratory fish populations. This is made even more important given the information we have and are gaining on the impacts of climate change on the range, distribution, and life-history requirements of species. We urge the advisory committee to consider changes which: 1) Adhere to statute; 2) Align with existing departmental policies, specifically the Native Fish Conservation Policy and Climate and Ocean Change Policy; 3) Have a high level of specificity to provide direction for the task force and clarity for stakeholders." "Thank you for the opportunity to comment. Please reach out if you have any questions or need clarification. If it would be helpful, subsequent comments could be added as track changes. The following comments reference the "Working RAC DRAFT" document: Support adding "Policy and Intent" to clarify the intent of statute and integration of the Climate and Ocean Change Policy. Recommend referencing both the authorizing ORS and OARs including Climate and Ocean Change Policy and Native Fish Conservation Policy. Line 5: delete "Potential" and "may." The Climate and Ocean Change Policy makes clear that there will be changes in Oregon's future climate. Utilizing "Potential" and "may" imply uncertainty which is not consistent with the climate policy language. Line 7-8: statute does not provide discretion for "recognizing and minimizing burdens placed on the owners and/or operators of artificial obstructions." Remove language. Suggest reframing to: "It is therefore the intent of these rules to promote fish passage to conserve and recover the native, migratory fish of the state consistent with the goals of the Native Fish Conservation Plan and Climate and Ocean Change Policy." Line 27: support addition of "has the potential to preclude, delay, or prevent..." This recognizes that native migratory fish could be impacted even if they are not currently present at the obstruction. Line 68: "within, below or above the channel" may narrow the trigger application. Wording should consider how to incorporate any component contributing to an artificial obstruction including those which are outside the channel itself. Lines 223-225: Support adding a definition of trigger event, but current wording is confusing. Recommend refining to ensure clarity. Lines 248-250: Support cleaning up language of task force terms. Lines 283-285: The priority list should include all artificial obstructions whether or not there is an existing legal agreement to waive or other requirement to address passage. The priority list can indicate these aspects, but providing a comprehensive list of passage issues can help focus and drive investments to those basins in other ways (like habitat restoration projects, flow augmentation agreements, etc.) Line 278-279: Integrate consideration of climate change impacts/needs utilizing the best available information in the factors for consideration in prioritization. Suggested wording: "Anticipated range shifts, local extirpations, altered species

compositions, and elevated life-stage vulnerabilities in response to climate change of native migratory fish.” (This wording reflects the language found in OAR 635–900– 0017(2)). Lines 300-301: Add “at least” so as to read “The priority list shall contain at least one artificial obstruction per Oregon sub-basin...” Statute does not specify the number or geography of artificial obstructions on the priority list. Amending to include “at least one” provides the department the opportunity to focus on areas where populations have the greatest biological need for passage if multiple barriers in a subbasin are the major factors limiting conservation and recovery goals. Obstructions can still be prioritized within the subbasin as well. Line 307: In statute, only the Commission may order construction/installation of passage. Line 311: Remove; no mention in statute and creates confusion. What does the owner or operator have to work cooperatively with the department on? What qualifies as reasonable cooperation? Lines 307-325 are not wholly consistent with statute at present. The Commission has authority to also require fish passage even if the artificial obstruction is not on the priority list. Suggest creation of new section to better align with ORS 509.625, Suggestions for alignment include: Suggest amending the “prioritization” section (starting at line 280) and retitle: Prioritization and authority to require passage construction or remove obstruction. Suggest including the following to better align with statute: (#)The commission may order the owner and/or operator of an artificial obstruction to install, improve, rebuild or mitigate fish passage within a defined timeframe if: (a) An emergency exists and the department has field verified the information used to make the emergency determination; (b) The artificial obstruction has existing fish passage, whether previously approved or not, that is now useless or inadequate for the purposes for which it is intended, though such construction may not interfere with the prime purpose of the artificial obstruction; or (c) The artificial obstruction is on the priority list and the Department can arrange for non-owner or non-operator funding of at least 60 percent of the cost for fish passage design, construction, and installation (##) Notwithstanding paragraph (#)(c) of this subsection, the commission may order installation of fish passage or alternatives to fish passage without regard to funding sources if: (a) The person owning or operating the artificial obstruction is already subject to an obligation to install fish passage or to provide alternatives to fish passage; (b) If the commission declares an emergency; or (c) If the person owning or operating the artificial obstruction has not been issued a water right or if the artificial obstruction has been otherwise unlawfully installed. +Add to definitions section the meaning of “Emergency.” Suggestion: “Emergency means a high likelihood that a native migratory fish population will go extinct or be extirpated from the basin if passage is not provided at an artificial obstruction.” The following comments reference the existing OARs provided by hyperlink on the comment form: Lines 6-8: Include environmental impediments such as water temperatures, reservoir pools, low flows, or flushing flows resulting from “any dam, diversion, dike, berm levee, tide or flood gate, road, culvert of other human-made device...” in the definition of “Artificial obstruction” Line 22: add “cumulative” so as to read: “for dams and diversions, cumulative excavation or replacement of 30 percent....” This provides consistency with other obstruction types while rectifying a problematic loophole that has resulted in the piecemeal repair and maintenance of numerous projects that have resulted in

sustained impacts to native fish and aquatic ecosystems. "Fish Passage Approval" section: Integrate consideration of climate change impacts/needs utilizing the best available information in the factors for consideration in fish passage approval. Lines 266-269 suggested wording: "Prior to construction... shall obtain a determination from the Department as to whether native migratory fish are or were historically present in the waters or are anticipated to utilize the waters due to climate change-induced range shift of native migratory fish." Line 333: define "appreciable benefit" " 2021-05-07 16:42:25