

ODFW Draft Rule Revision Proposals

Fish Passage Criteria Section OAR 635-412-0035

12-14-2021 **DRAFT**

Bold italicized text indicates new propose language.

Strikethrough red text indicates text to be removed.

Lines 526 to 560 (from existing rules)

635-412-0035

Fish Passage Criteria (tide gates)

(lines 526 – 533)

(4) Requirements for fish passage at artificial obstructions in estuaries, and above which a stream is present, are:

- (a) Fish passage shall be provided at all current and historic channels;
- (b) Fish passage structures shall meet the criteria of OAR 635-412-0035(2) or (3), except fish passage structures shall be sized according to the cumulative flows or active channel widths, respectively, of all streams entering the estuary above the artificial obstruction.
- (c) Tide gates and associated fish passage structures shall be a minimum of 4 feet wide, ***a side hinged configuration, made of aluminum***, and shall meet the requirements of OAR 635-412-0035(2) within the design streamflow range and for an average of at least 51% of tidal cycles, excluding periods when the channel is not passable under natural conditions. ***Design flows shall consider tidal exchange, freshwater stream discharge and water detention storage volumes upstream of the tide gate.***
- (d) ***Invert elevation of tide gate and associated fish passage structure shall be placed at -1 foot (NAVD88) or as appropriate to the site to prevent perched low flow passage conditions and allow proper tide gate function.***
- (e) ***Water management plans shall be developed for projects implementing MTR devices.***

Note: Tide gates associated with priority restoration habitat or habitat volumes 5 acres and greater shall consider pet door and Muted Tidal Regulator (MTR) devices to maximize water exchange, fish passage and tidal inundation.

(lines 534 – 560)

(5) Requirements for fish passage at artificial obstructions in estuaries, floodplains, and wetlands, and above which no stream is present, are:

- (a) Downstream Fish Passage:
 - (A) Downstream fish passage shall be provided after inflow which may contain native migratory fish;

(B) Downstream fish passage shall be provided until water has drained from the estuary, floodplain, or wetland, or through the period determined by the Department which shall be based on one, or a combination of, the following:

(i) A specific date;

(ii) Water temperature, as measured at a location or locations determined by the Department;

(iii) Ground surface elevation;

(iv) Water surface elevation; and/or

(v) Some other reasonable measure.

(C) Egress delays may be approved by the Department based on expected inflow frequency if there is suitable habitat and as long as passage is provided by the time the conditions in OAR 635-412-0035(5)(a)(B) occur;

(D) A minimum egress flow of 0.25 cubic feet per second (cfs) at one point of egress shall be provided;

(E) Egress flow of 0.5 cfs per 10 surface acres, for at least the first 100 surface acres of impounded water, shall be provided;

(F) All plunging egress flows shall meet the requirements of OAR 635-412-0035(2)(I)(B);

(G) If egress flow is provided by a pump, it shall be appropriately screened;

(H) The minimum water depth and width through or across the point of egress shall be 4 inches;

(I) The ground surface above the artificial obstruction shall be sloped toward the point(s) of egress to eliminate isolated pools **and topographic conditions that may entrain native migratory fish**; and

(J) An uninterrupted, open connection with a minimum water depth of 4 inches shall be present from the point of egress to the downstream waters of this state, unless another connection is provided as per OAR 635-412-0035(2)(I)(A).

(b) Upstream Fish Passage: a fishway or road-stream crossing structure with or without a tide gate shall be provided during the period determined by the Department if there is current or historic native migratory fish spawning or rearing habitat within the estuary, floodplain, or wetland area impounded by the artificial obstruction.

(2) Unvented fords and low water crossings

Note: The department will authorize construction of new unvented fords in limited situations when it is the least impacting water crossing option. The following are examples of situations where the department may authorize an unvented ford: (i) The stream has extreme seasonal flow variations and low flows during anticipated ford use; (ii) The channel has low bank height and low gradient approaches; (iii) The stream has dynamic flood plains, such as alluvial fans; or (vi) The stream is subject to mass wasting events, debris transport, or extreme peak flows.

Unvented ford crossings shall meet the requirements of OAR 635-412-0035(2); and shall:

- (1) Be located outside of all known or suspected fish spawning areas such as pool tail-outs,***
- (2) Be constructed perpendicular to the stream flow, or as close to perpendicular as practicable,***
- (3) Minimize the width (perpendicular to flow) to the maximum extent practicable,***
- (4) Maintain similar water depths and flow velocities as surrounding stream during fish passage design flows,***
- (4) Have a low flow channel constructed within the crossing,***
- (5) Be constructed using materials approved by the department and shall:***
 - (a) Not be comprised of broken concrete, pavement or other debris,***
 - (b) Be comprised of clean washed gravel and rock,***
 - (c) Be countersunk and vertically align with the existing stream channel profile and gradient,***
 - (d) Be designed to allow natural bedload transportation, and***
 - (e) Be designed to withstand overtopping flood events.***
- (7) Be used during periods of no or low stream flow, and***
- (8) Be regularly inspected and maintained to provide fish passage.***