

Prioritization Section 0015 (sorted by line 6-3-2021)

5 11 "Bend, Oregon" " 635-412-0015, lines 221-260" 221 "While anadromous fish are important, restoration of some other aquatic habitats without anadromous species, but with other important species and aquatic communities, is also important. The Newport Avenue Dam, for example, is the only remaining blockage for fish for about 90 miles below Wickiup Dam. Removal of that dilapidated PacificCorp dam, a safety hazard, would provide genetic interchange and access to cool water refugia for fish and other aquatic species. Bull trout and Redband trout were once common at the site. Oregon spotted frog are just upstream. A fish ladder should be rebuilt if the dam is not going to be removed and protective screens installed. The prioritization ranking process should be changed so that mitigation of adverse impacts of a dam such as Newport Avenue Dam would receive a higher priority ranking." Revised the Rule to provide a more robust prioritization process that takes multiple considerations into account. All permitting for dams should require ODFW review and an extensive public involvement process. 2021-03-11 20:38:18

9 15 Bend Oregon "635-412-0015, lines 221-260" 221 "1) ODFW staff have had questions about the prioritization process as documented in Intradepartmental ODFW emails (obtained by FOIA): One is whether ORS 509.625 should trump OAR 635-412-0015 (email from K Smith, 4.23.2019) A second question is about the prioritization listing process. In an email by A. Ritchie (4.23.2019) it is noted that at the time these rules were written ODFW had four or five regions for the prioritization OAR. It now has two. This changes greatly the impact of the prioritization listing. One can question whether the priority listing process has become an obstacle, rather than an aid, for resolution of passage obstacles. 2) While RAC rule lines 226-238 list the criteria used for the priority evaluations, I have been unable to find more meaningful details, such as the database used to develop the numerical valuations of the 2019 list update. Clearly the obstacles ranked have a great variety of factors to consider. A question I could not answer is whether the database for ranking for the Mirror Pond dam in Bend was updated to include restoration of passage at the downstream NUI diversion dam. The process could have more utility if transparency is improved. 3) When one reviews the 2019 updated priority list it is apparent that the presence of anadromous fish dominates the ranking process. In fact, I have been told several times that progress on passage at the Mirror Pond dam on the Deschutes River is unlikely given the lack of anadromous fish or an ESA listed native fish. Lack of anadromy or an ESA listed native fish should not diminish the importance of passage at Mirror Pond: i) ESA listed bull trout have been extirpated in the upper Deschutes by anthropogenic factors; passage obstruction was a major factor in their extirpation. ii) The upper Deschutes trout fishery is widely acknowledged to have been one of the premier fisheries in the state. This is of note for native redband trout which are a state listed sensitive species. While much work has been done and more is underway for restoration of that fishery (see our comments submitted for OAR 635-412-0005), ODFW research has documented the genetic compromises created by fish passage obstruction at Mirror Pond (Bohling et al, North American Journal of Fisheries Management © 2019 American Fisheries Society ISSN: 0275-5947 print / 1548-8675 online, with error acknowledgment by the authors in an email of 01.25.2021 in response to my review, available on request). Given the outlook for climate change impacts, connectivity and gene flow between segments of the Deschutes River can reasonably be called critical for sustainability of the native redband

population. 4) The 2019 updated priority list ranks passage at Bowman dam on the Crooked River above passage at the Mirror Pond dam in the upper Deschutes basin. The possibility of anadromous fish almost certainly explains this ranking. But at this time, because of complex multiple factors, passage at Bowman, theoretically a goal for some future date, will not be implemented in the near future. In contrast, passage at Mirror Pond is a problem ripe for solving now. In the case of the upper Deschutes sub basin the priority ranking seems flawed by its failure to include assessment of feasibility of remedies. Isn't it sensible to ask for each obstacle - what are the prospects for remedy of the passage obstacle in the near future? It arguably is an issue for several of the top 10 ranked obstructions in the 2019 priority listing. 5) Language in OAR 635-412-0015 could be read as directing ODFW to limit enforcement efforts to the highest ranked obstacles. But surely the priority list should not prevent execution of the processes laid out in other rules when a fish passage "trigger" has been identified for a specific dam construction or maintenance project. Ambiguity regarding enforcement in 635-412-0015 should be eliminated. "Revise line 251: delete "department region"; substitute "within each Oregon sub basin" Rationale: to make consistent with line 239. As documented in ODFW email exchanges designation of "regions" has changed from the initial issuance of this OAR. ODFW "regions" are now so large that functionality is lost in the application of this OAR. For the following, I look for wording to be developed by the department. line 238: Following "given site", I would like to see added a feasibility parameter. This would be an estimate of when remedy of obstruction at a specific site might be executed, based on professional judgement of the department and other information as available. For example, one site might be rated ready for implementation work, while another could be rated indefinite pending resolution of identified factors. I would like to see this incorporated into the ranking score, or perhaps listed for each obstacle along with the current numerical ranking. line 240 (or somewhere in this area of the OARs): It would be practical for rankings to be reported separately for obstacles with anadromy and for obstacles without anadromy as separate ranking databases. This would be useful for planning by various stakeholders, funding efforts, public outreach etc. lines 244 and 245: There is a need to strengthen transparency and public participation in the priority ranking process. Clear notification to the public should be executed so that public input is incorporated into commission considerations. Often local stakeholders have knowledge or insights not available for staff based elsewhere in the state. The error in the 2019 Bohling report, cited above, is a prime example of this. To optimize this process, the database and processes used to develop the numerical priority rankings should be made available for public review and comment in a timely manner. This might fall into the guideline category more than the OAR framework. line 260: To convey clarity and eliminate ambiguity, I would like these lines to specify that any passage obstacle which has incurred a triggering event will be pursued for enforcement by the department, independent of other enforcement directives based on the priority list. "

2021-03-12 16:05:22

189 na ODOT 635 – 412 – 0015 – Prioritization - Line 222 222

"Opportunity to add a climate change metric and scoring to barriers as part of ODFW climate change policy. Climate change score could be in addition to existing formulas, and be based on current model projections available through the Pacific Northwest Research Station Climate Change models; located here. Barriers could be assigned scores based on climate change models, where "suitable habitat" (i.e water temperature, quantity, ect) in 2080 projections receive additional points, whereas

barriers that have low habitat value based on models receive less or negative “climate change score” value as part of overall equation.”

190 na ODOT 635– 412 – 0015 – Prioritization - Line 223: 223 What is the purpose of “enforcement”? I think this confuses the public and stakeholders

62 68 Portland Prioritization (-0015 (2)); Line 225 225 "To address climate change, certain watersheds may need to be prioritized above others because of water availability and water temperature of a changing climate. In general, statements about current and future conditions should be strategically located throughout document in recognition that we may be playing defense for a while...." Prioritization (-0015 (2)); Line 225 "The priority list shall be based on the current and future the needs of native migratory fish." 2021-05-07 08:04:42

191 na ODOT 635– 412 – 0015 – Prioritization - Line 225 225 Recommend rewording to “The priority list shall be based on the needs of native migratory fish at population and watershed scale”.

151 na PacifiCorp Prioritization (-0015 (2)); Line 225 225 "To be consistent with ODFW’s climate change policy, document should recognize that certain watersheds may need to be prioritized above others because of water availability and water temperature of a changing climate.

Suggest the following edit: “The priority list shall be based on the current and future the needs of native migratory fish.””

42 48 Portland PacifiCorp 635-412- Prioritization Section 225 "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. " "Prioritization (-0015 (2)); Line 225 To be consistent with ODFW's climate change policy, document should recognize that certain watersheds may need to be prioritized above others because of water availability and water temperature of a changing climate. Suggest the following edit: "The priority list shall be based on the current and future the needs of native migratory fish." "

2021-05-04 14:06:40

2 8 BEND 635-412-0005 LINE 225 225 "I would like to emphasize the need to keep the native migratory fish as high a priority as wild anadromous fish. On the Deschutes River the Bend Hydro Project blocks access to well over 100 miles of the Upper Deschutes to fish that currently reside in the Middle Deschutes. Further more approximately 3,000 wild fish per year are pureed in the turbines as they try to migrate downstream. The Upper Deschutes was once one of if not the best trout fishery in the state. Millions are being spent to improve flows and habitat. It makes no sense to deny this barrier a high priority for passage because anadromous fish are not present. The application of the rules should also reflect the importance of resident fish." "Keep the wording ""native migratory fish"" and make sure the enforcement of the rule reflects the importance of resident wild fish. "

2021-03-11 10:38:30

48 54 BEND "When selecting which dams are highest on the fish passage priority list factors such as the cost or ease of providing passage should be considered. In the Deschutes Basin, Bowman Dam has the highest rating. The cost of providing passage there is very expensive and difficult. providing passage at the Mirror Pond would be significantly less and yet provide a huge benefit to the fishery. Wild native fish should have the same priority as anadromous fish. " 226

2021-05-06 07:42:56

257 na Whooshh Prioritization Section 635-412-0015 226 Should there not be consideration of selective fish passage? (e.g. exclusion of hatchery fish or invasive fish species) 5/18/2021

48 54 BEND "When selecting which dams are highest on the fish passage priority list factors such as the cost or ease of providing passage should be considered. In the Deschutes Basin, Bowman Dam has the highest rating. The cost of providing passage there is very expensive and difficult. providing passage at the Mirror Pond would be significantly less and yet provide a huge benefit to the fishery. Wild native fish should have the same priority as anadromous fish. " 226
2021-05-06 07:42:56

42 48 Portland PacifiCorp 635-412- Prioritization Section 228 "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. " Prioritization (-0015 (2)(a)(A)); Line 228 Same edit as above: "The quantity of current and future native migratory fish habitat which is inaccessible."
2021-05-04 14:06:40

152 na PacifiCorp Prioritization (-0015 (2)(a)(A)); Line 228 228 Same edit as above: "The quantity of current and future native migratory fish habitat which is inaccessible."

192 na ODOT 635- 412 – 0015 – Prioritization - Line 228: 228 "As currently written, does not address the future potential of habitat, only its current state. Re-word: "the current or potential quality of native migratory fish habitat which is inaccessible". Only allowing for the current state is limiting"."

42 48 Portland PacifiCorp 635-412- Prioritization Section 229 "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. " " Prioritization (-0015 (2)(a)(B)); Line 229 Need consistency with ODFW's climate change policy and needed focus on science-based risk decision. Edit: The current and future quality of native migratory fish habitat which is inaccessible, after incorporating best available science regarding likely impacts of climate change on the habitat. " 2021-05-04 14:06:40

153 na PacifiCorp Prioritization (-0015 (2)(a)(B)); Line 229 229 "Need consistency with ODFW's climate change policy and needed focus on science-based risk decision.

Edit:

The current and future quality of native migratory fish habitat which is inaccessible, after incorporating best available science regarding likely impacts of climate change on the habitat."

63 69 Portland Prioritization (-0015 (2)(a)(B)); Line 229 229 Critical that ODFW incorporates best available science and forecasting tools to make science based risk decisions. This may mean hard choices. "Replace line 229 with ""The current and future quality of native migratory fish habitat which is inaccessible, after incorporating best available science regarding likely impacts of climate change on the habitat."" 2021-05-07 08:12:41

258 na Whooshh "Prioritization Section 635-412-0015 ""Level of Fish Passage"" lines 294" 233 "What is this supposed to mean ""Level of Fish Passage""? Clarify as to what is intended here." 5/18/2021

193 na ODOT 635- 412 – 0015 – Prioritization - Line 237 237 Professional judgement needs to have some sideboards. The statement is also ambiguous. Perhaps add "interpolate the best available data" including relevant metrics that are considered.

154 na PacifiCorp Prioritization (-0015 (2)(b)); Lines 237-238 237 Within this section need to add that the relative position of an artificial obstruction on the priority list shall not be used as a basis for approving or denying waivers.

155 na PacifiCorp Prioritization (-0015 (2)(c)); Lines 239-240 239 "Propose striking (c) as making the priority list contain one artificial obstruction per sub-basin is arbitrary. In order to be effective, the Priority list should be statewide."

42 48 Portland PacifiCorp 635-412- Prioritization Section 239 "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. " "Prioritization (-0015 (2)(c)); Lines 239-240 Propose striking (c) as making the priority list contain one artificial obstruction per sub-basin is arbitrary. In order to be effective, the Priority list should be statewide. " 2021-05-04 14:06:40

57 63 Coquille / Coos Bay "Coquille Watershed Association (Melaney Dunne), Coos Watershed Association (Ed Hughes) " Line 242-243 - Prioritization 242 ""(e) The Department shall re-evaluate the priority list with the most recent information after enforcement occurs at 242 five priority artificial obstructions or as directed by the Commission." The current wording implies that fish passage barriers/priorities are only addressed via enforcement. This is not accurate as often there are many willing landowners on the priority list that are eager to address a barrier in partnership with a local organization such as a watershed council or ODFW directly. Therefore, amending the wording to be inclusive of both situations (enforcement and willingness to upgrade a structure) indicates that not all barriers are regulated through an enforcement action, some can be addressed willingly prior to enforcement being needed. " Change wording to the following: "(e) The Department shall re-evaluate the priority list with the most recent information after FISH PASSAGE IMPROVEMENT occurs at five priority artificial obstructions or as directed by the Commission." 2021-05-07 07:46:42

194 na ODOT 635- 412 - 0015 - Prioritization - Line 243 243 What is the purpose of this statement and how is "five" relevant?

259 na Whooshh "Prioritization Section 635-412-0015 ""Commission Ordering Fish Passage" 246 "Given definition of fish passage this sentence does not make sense to me. Its circular. Change and clarify by replacing ""fish Passage"" with ""Fishway or Experimental Fish Passage Structure""

260 na Whooshh "Prioritization Line 313 edited version ""Commission Ordering Passage"" 248 "Change Fish Passage to ""Fishway or Experimental Fish Passage Structure""

166 na "OFIC, AOL & OSWA" 635-412-0015(5) 249 "The potential benefit stemming from restoring fish passage is for the overall population and health of state fish populations- a benefit to every Oregonian. Yet to date, most of the cost for removing these barriers has been borne entirely by individual forest landowners. A recent State report noted the following;

"over the past 20 years, the Oregon Plan has facilitated substantial landowner contributions to salmon restoration. In the Oregon Coast Range, landowners have completed 5,639 voluntary restoration projects at a cost of over \$162 million. Moreover, 84% of these projects received no incentive funding, and the costs of implementation were borne entirely by landowners." (Abraham, et. al. 2017)

All of society has an interest in and benefits from the conservation of fish and wildlife species, and therefore society should bare a much larger percentage of the burden for their well-being. We propose a cost share program, recognized by rule, for all projects on private lands that appropriately balances the burden for this restoration work. This mutual investment will fittingly include a conversation regarding a cost/ benefit analysis for the project so that public funds are expended for those projects that result in real benefits to the species." "Noting that within OAR 635-412-0015(5) non-owner funding of at least 60 percent must be obtained, we recommend that percentage be increased, and furthermore recommend that this concept be extended beyond those blockages contained on the priority list"

135 na Deschutes TU Line 253-257: 60% funding provision by the Department 253
"Line 253 - 257: This OAR is in the context of the Department arranging at least 60% funding for the design, construction and installation of fish passage at an owner or operator's artificial obstruction. The owner/operator then has two years to either get the fish passage installed OR "provide mitigation that the Commission determines is a net benefit to native migratory fish". Question: why would the Department go to the time and effort of negotiating a 60% funding arrangement with the owner/operator to install fish passage yet still leave the mitigation option on the table?" "Line 257: b) Provide mitigation that the Commission determines is a net benefit to native migratory fish."

195 na ODOT 635- 412 - 0015 - Prioritization - Line 257: 257
"Though ideal, 2-years to provide mitigation is not realistic. Perhaps 1-year to propose mitigation to the Fish Passage Task Force?"

42 48 Portland PacifiCorp 635-412- Prioritization Section * "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. " "Introduction (New) RAC members have suggested an introductory statement of policy and intent. Our suggested language is as follows: It is the policy of the State of Oregon to provide for the upstream and downstream passage of native migratory fish at artificial obstructions. Potential changes in Oregon's future climate may exacerbate fish passage problems and perhaps threaten the very existence of some native migratory fish species. It is therefore the intent of these rules to promote providing fish passage, or mitigation measures that provide greater net-benefit, while recognizing and minimizing burdens placed on the owners and/or operators of artificial obstructions. Definitions (-0005; New) "Appreciable benefit" means that fish passage at an Artificial Obstruction would provide fish with access to existing habitat of the type, duration, frequency, quality, and quantity needed to support healthy populations of one or more life history stages of those native migratory fish that are present downstream of Artificial Obstruction at the time of the exemption request. Definitions (-0005 (b)(A)); Line 22 and 23 "Major replacement" denotes a majority (i.e., more than 50 percent). The volumetric threshold for excavation or replacement of dams and diversions should be brought in line with the other facility types that require over 50 percent to meet this definition. In consideration of the change above, structure volume would be inclusive of the entirety of the Artificial Obstruction, including any earthen embankments, and not just the concrete portion of the obstruction. Definitions (-0005 (b)(A)(i)); Line 24 and 25 Insert between (i) and (ii) the following: (ii) The major replacement is for the purpose of addressing dam safety deficiencies and does not increase operating storage or diversion capacity. Modifications that are for dam safety and/or to increase reservoir storage solely to address high runoff conditions and protection of downstream resources should be exempt from this requirement. For example, the Federal Energy Regulatory Commission (FERC) may require an increase in dam height to help pass a Probable Maximum Flood (PMF), however that newly gained storage would not be part of normal operations, and would only be used during a PMF event. Definitions (-0005 (18)); Line 75 Suggest striking "with minimal stress" as it is a subjective term and there is a better criterion below (physiological injury). Definitions (-0005 (21)); Lines 84-85 Suggest the following edit: "....flow into the waterway downstream of an artificial obstruction tailrace and where

upstream...” Definitions (-0005 (24)); Line 91 “Impoundment” or “reservoir” are more appropriate terms than “Forebay”. A forebay is generally something else entirely in hydropower: temporary storage basin upstream of an intake chamber (i.e., penstock). Definitions (-0005 (25)); Lines 92-96 Text should be revised so that adding new hydroelectric generation to existing dams and using the stream flow release as a non-consumptive use (e.g., hydro generation) does not trigger construction of fish passage. Suggested text: “...conditions on the applicant, where the proposed action creates a new Artificial Obstruction or increases the severity of an existing Artificial Obstruction including but not limited to licensing, relicensing, reauthorization or the granting of new water rights that affect availability of instream flows downstream of the artificial obstruction...” Definitions (-0005 (32)); Line 109-112 The rules need to be able to distinguish diadromous migrations, more specifically anadromy, from other life history strategies. Fish movements are biologically distinct from migration and should be represented as such in the rules. Consider adding a definition of “migration” to include a persistent, undistracted and straightened-out movement, achieved through the fish’s locomotory means or by actively seeking a transport medium (e.g., water currents), during which individuals remain undistracted by the resources they might find during migration by temporarily inhibiting ‘station-keeping responses’ (i.e., residency) and that might be repeated later in life (adapted from Dingle 1996 in Morais and Daverat 2016). This definition would impact 635-412-0025 (2) and discussion of relative value of anadromous benefit versus resident species benefits in a net benefit analysis. Alternately consider adding “obligated” to the definition so as to read “... native fish and their life stages.....that are obligated to migrate....” Definitions (-0005 (41)); Line 163 Suggested text: “...of an instream structure discharging flow to a receiving water body.” Prioritization (-0015 (2)); Line 225 To be consistent with ODFW’s climate change policy, document should recognize that certain watersheds may need to be prioritized above others because of water availability and water temperature of a changing climate. Suggest the following edit: “The priority list shall be based on the current and future the needs of native migratory fish.” Prioritization (-0015 (2)(a)(A)); Line 228 Same edit as above: “The quantity of current and future native migratory fish habitat which is inaccessible.” Prioritization (-0015 (2)(a)(B)); Line 229 Need consistency with ODFW’s climate change policy and needed focus on science-based risk decision. Edit: The current and future quality of native migratory fish habitat which is inaccessible, after incorporating best available science regarding likely impacts of climate change on the habitat. Prioritization (-0015 (2)(b)); Lines 237-238 Within this section need to add that the relative position of an artificial obstruction on the priority list shall not be used as a basis for approving or denying waivers. Prioritization (-0015 (2)(c)); Lines 239-240 Propose striking (c) as making the priority list contain one artificial obstruction per sub-basin is arbitrary. In order to be effective, the Priority list should be statewide. 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.” 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.” Fish Passage Waivers and Exemptions (-0025 (2)); Lines 320-324 A discussion of the relative value of anadromous species benefits versus resident species benefits should be provided here

or elsewhere. This analysis needs to consider all benefits to fish from the proposed action including water quality, water quantity, habitat, predator reduction, denial of passing non-native species, etc. For example, adding generation to an existing dam and thereby increasing DO downstream of the dam should be counted as benefit to fish. The net benefit analysis should consider both current and future (climate change) conditions. Fish Passage Waivers and Exemptions (-0025 (4)); Lines 328-333 Insert these or similar revised statements as subordinates under (4): (x) Climate change negatively impacts the future quality and quantity of fish passage (e.g., where current habitat suitability has been deemed “marginal” upstream of barrier); (y) The exemption aligns with renewable energy policy and ODFW climate and ocean change policy OAR 635-900-0001 to 0020, including provisions for an exemption for fish passage when installing a hydropower unit at an existing artificial obstruction that is not subject to the state’s fish passage OAR (federal ownership) or when hydropower was not an original authorization for the artificial obstruction. Fish Passage Waivers and Exemptions (-0025 (8)); Lines 343-347 All proposed mitigation measures should be considered in the benefits analysis. Typically, mitigation packages address a variety of environmental impacts and provide integrated benefits across resource areas. Values of mitigation measures should not be individually assigned or credited to a single resource. For example, improving dissolved oxygen benefits water quality and the resources (in particular, fish) dependent on that environment. Edit: “.....whether the waiver request meets the requirements of subsection (1) or the exemption request meets the requirements of subsections (4) and (5), including any biological benefits resulting from conditions of a Clean Water Act Section 401 water quality certification.” Fish Passage Criteria (-0035 (11)(b)); Lines 654-659 The statement “If at any time an experimental fish passage structure is deemed by the Department in writing to not provide fish passage...” seems very subjective. Statement would benefit from identification of reasonable standards that can be referenced and measured. At the end of (11)(b) need to remove “but no later than the end of the next complete in-water work period after notification by the Department.” In most cases this is not feasible or reasonable, and the earlier text “shall be installed as soon as practicable” drives the timing of construction. Mitigation Criteria (-0040 (2)(b)); Line 682 Edit: Restoration or enhancement of native migratory fish habitat that fulfills obligate requirements of a migratory life-stage; Mitigation Criteria (-0040 (3)); Lines 686-688 As noted in a previous comment, all proposed mitigation measures should be considered. Edit: Mitigation shall not include may include any activity that is a requirement or condition of any other agreement, law, permit, or authorization except if the activity results from a judicial proceeding or settlement to address violations in state or federal law. if it is also for fish passage mitigation of the same action at the artificial obstruction for a different level of government. Mitigation Criteria (-0040 (9)(c)); Line 705 To provide the greatest opportunity for mitigation value, revise text to: “Shall benefit the same native fish species affected at the artificial obstruction or provide greater relative benefit to migratory (e.g., anadromous), endangered, and/or threatened species not affected at the artificial obstruction than to those non-migratory, non-endangered, or non-threatened species affected at the artificial obstruction. ” 2021-05-04 14:06:40

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 or 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