



May 7, 2021

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Greg Apke, ODFW Fish Passage Program Coordinator greg.d.apke@state.or.us

Re: Fish Passage Rule Revisions

Dear Mr. Apke,

Thank you for the opportunity to submit comments for Fish Passage Administrative Rule Revision.

I have followed the format of the on-line form.

What Rules Should be Revised (include specific line numbers)

Lines 6-8: Definition of artificial obstruction.

Lines 21-23: diversions, excavations, or replacement of 30% of structure volume of the dam.

Lines 322-324: Net benefit analysis.

Line 341: Add new section: Request for review of an established exemption or waiver.

Line 680: Additional Mitigation options.

Lines 698-699: Mitigation reporting schedule.

Why Changes are Important.

Lines 6-8: Replace artificial obstruction with the more effective term “artificial barrier”. Research indicates that physical barriers can cause changes in water quantity or quality that can be a barrier to fish migration and survival. These conditions may be intensified by climate change.

Lines 21-23: Clarify the Major Replacement trigger. The 30% structural revision or repair trigger for fish passage review, should be triggered whether the barrier structure was modified as a single project or as a series of separate structural repairs or revisions, over time.

Line 322: The net benefit should be validated by quantifiable measures.

Line 324: Allow for reevaluation of a waiver if data indicates that it has not provided the declared net benefit.

Line 341: Allow for review and revision of an exemption or waiver decision if circumstances have changed or new information becomes available.

Lines 680: Add additional mitigation options: Fund a mitigation project through an unaffiliated organization or government agency or conservation trust fund.

Lines 698-699: Define the schedule for reporting on evaluating the effectiveness of mitigation.

Suggested Rule Changes (include specific line numbers): *current language in the regulations is in italics.*

Lines 6-8: *Artificial barrier means any dam diversion, dike, berm, levee, tide or flood gate, road, culvert, or other human-made device placed in the waters of this state that prevents the migration of native migratory fish by physically blocking the waterway or by producing conditions in the water that preclude fish migration, including low flow, water temperature or toxic chemical concentrations.*

Lines 21-23: 21(b) *Major replacement, which includes:*
22(A) *for dams and diversions, excavation, or replacement of 30 percent by structure volume of the dam, including periodic or seasonal replacements, whether completed as a single project or as the result of an accumulated series of non-contiguous structural additions and revisions, unless:*

Line 322: *proposed mitigation.* To validate the net benefit of a mitigation proposal, quantifiable measures will be established for each project prior to the final waiver decision. The measures will be applied, as required by the waiver decision, to fulfill the operator's monitoring requirement for each mitigation project. The results will be reported to the Department as required by regulation.

Line 324: *determination shall be based upon conditions that exist at the time of comparison.* If it is established through post construction monitoring that the mitigation project has not met the net benefit monitoring specifications required in the waiver decision, the waiver may be reviewed for possible revision or revocation.

Line 341: Upon request by any private citizen, organization, government agency or official a decision to grant a fish passage exemption or waiver will be reviewed by the Department, Task Force, or Commission. If the reviewing body determines that the circumstances on which the exemption or waiver decision was based are no longer valid the Department or Commission may revoke or revise the decision.

Line 680: passage under OAR 635-412-0015 or 635-412-0020. Mitigation may include, if approved by the Task Force or Commission, direct funding of a mitigation project through an unaffiliated organization or government agency or the establishment of conservation trust fund that will award grants to fund conservation projects in the subject watershed.

Lines 698-699: *effectiveness of* mitigation and submitting an annual report to the Department. Reports will be posted on the Department website for public review. (We recommend that the Department set a date for these reports that will work best for the Department or at the end of the calendar year or on the annual date of the barrier project approval.)