

ODFW Rules Advisory Committee Meeting – March 23, 2021

FISH PASSAGE OREGON ADMINISTRATIVE RULES – OAR 635-412-0005 - 0040

2021 Potential DRAFT Rule Change Concepts for Consideration and Discussion:

- **Climate Change Policy Integration Into Rules**
 - OFWC mandate and policy consistency (OAR 635-900-0005 through 0020)
 - Larger culvert crossings (1+ stream simulation model)
 - Larger ACW's in west side drainages
 - implication for tide gates
 - Reducing ACW's in arid
 - Low flow channels
- **Beavers**
 - Exclusion Devices – Culvert Exclusion Fencing (not just a beaver issue, move to general criteria and not exclusive to trash racks)
 - Exclusion Fencing (species and life history specific sizing criteria)
 - Maintenance & Cleaning (debris & drift)
- **Culvert Hydraulic Design Alternative Option**
 - Consider specific criteria for water depth, velocity, energy dissipation, shear stress, and other hydraulic conditions (literature review)
- **Nature-like Fishway Design Criteria**
 - Consider specific criteria for water depth, velocity, shear stress, bed material, etc.
 - Consider a unique section in rule that separates these from other fishways
- **Bridge Guidelines**
 - Trigger Clarification on clear span definition
 - Cumulative triggers (consistency) 50% of structure including bridge structural elements & scour protection countermeasures
 - With exceptions to routine road or wearing surface repairs/replacements
 - Freeboard & Clearance between state and feds
 - Pass 3-ft above 50yr flood elevation (Tech note 4)
 - Current ODFW is 3' freeboard above
 - (50-yr verses OHW or ~2-yr flood elevation)
 - Bridge Bents & scour protection treatments
 - Large bridge guidance W/ multiple bents
 - DOF & Tech Note 4 alignment
- **Native Migratory Fish Species (OAR 635-007-0501)**
 - Millicoma or other dace (sensitive)
 - Pink salmon
 - Lamprey
 - Taxonomy changes – Clean up in rules
 - Add brook lamprey
 - Revise design criteria & consistency with USFWS
 - Apply to sensitive species in addition to T&E

- Dace, shiners, cottids (staghorn)
 - limit to sensitive listing status
- Chub species (Umpqua & Oregon)
- Estuarine – Marine Species
- **Trigger Clarification**
 - One structure with multiple owners
 - Separate structures & separate ownership
 - Culverts and Trash Racks
 - Culverts and Tide Gates –one trigger the other (new trash rack or tide gate on an existing and undersized culvert)
 - Abandonment (trigger tide gate & culvert)
 - Structurally connected
 - Structurally dis-connected
 - Culverts
 - Road & Stream Crossing Issues (yet to be defined)
 - Fishways
 - Define and clarify triggers at fishways
 - 30% or 50% and cumulative
 - Maintenance of fishway & Trigger
 - Fishway –vs- Dam triggers (same structure or physically/structurally connected)
 - Clarify cumulative maintenance or structural maintenance or modifications at fishways
 - Including non-structural fishways (nature like fishways, etc).
 - Authority at a new fishway where there is no trigger
 - What authority do we have to require passage at a fishway where we have no trigger and no fish passage approval exists for the installation of the structure.
 - Clarify authority at an approved and unapproved fishways that are not performing and the applicant chooses to do nothing
 - Criteria for fishways where non-anadromous species are present (Great Basin Redband and Warner Sucker)
 - Push-up Dams
 - Clarify triggers
 - Dams
 - Cumulative nature of trigger (consistency with culverts & tide gates)
 - Consistent percentages for maintenance triggers
 - Dam and public safety (may already be in WRD’s authority (see Bowman Dam and Parapet issues from years ago *Rick Kepler et al.*)
 - Other Trigger Clarifications:
 - Routine Maintenance Permits (WRD)

- Routine maintenance & how this is defined
- **Active Channel Width (ACW) Determination in Streams and Estuaries**
 - Expanding ACW in streams to be more consistent with federal authority & Stream simulation
 - Impacts with DOF MOU or state transportation network?
 - To account for climate changing hydrographs and to more efficiently transport bedload
 - Literature review
 - Defend with science & literature (ODFW Fish Research)
 - WDFW – literature
 - Why and where is this (ACW) presently not working for passage
 - Incised streams or in areas where field indicators are indeterminate
 - ID alternative measurement when indicators are unclear
 - Provide clarity for drainages where streams are present and where no streams are present or influence site hydrology
 - Does this include floodplains and wetlands above which a stream is present? (Similar to the beaver dam complex note above). Also, I'm curious about how lakes fit in here, not just ACW but passage how to figure out passage requirements.
 - ACW – is this best indicator/characteristic in estuaries to size for stream simulation
 - OHW/ACW is a field indicator and in estuaries based on low & high tide and should base this on tidal elevation (range of low & high tidal elevations)
 - Need to look at other methods (WDF & CalTrans is doing)
- **Tide Gates**
 - ACW determination in estuaries (see above) where indeterminate
 - Net benefits where limited estuarine habitat exists
 - Clarify when light weight side hinged gates or (Muted Tidal Regulator) MTR's are required or new technologies that maximize NMF passage opportunities
 - Time of gate open (51% of the time)
 - Top Hinged – Exclusion Device
 - Side hinged aluminum –vs- with MTR
 - Define thresholds to differentiate between the two and based on habitat value upstream of structure
 - Top hinge only for exclusion device or where limited habitat exists passage needs
 - How is “limited habitat” defined for sites
 - Criteria for gates and for appurtenances
 - Invert elevation guidance
 - Clarity on habitat value estuarine ecosystems
 - Quantification and consideration of sub-surface flows and structural sizing
- **Passage Waivers & Mitigation**

- Clarify which WRD Map or other map should be referenced when defining in-proximity (see 1991 OWRD Map)
 - HUC 6 (ODFW REDD Group) with higher resolution
- Clarification of “Appreciable Benefit” (Oct. 2020 FPTF Meeting Minutes)
- Guidance clarity on how to account for habitat where a natural barrier downstream of the culvert exists
- **Passage Exemptions – Efficient Process**
 - No brainer exemptions (procedural time sink on program staff for no benefit for NMF)
 - No fish present, downstream barriers
 - Barrier is not coming out in foreseeable future
 - ID conditions for expedited process
 - < some threshold for habitat & and d/s barrier
 - Provide metrics on existing exemptions (distance)
 - Expedited exemption procedures
 - ID criteria to be met to remove the need to go to the task force
 - Programmatic Exemption Process
- **Floodplain & Aggregate Mining Projects and Fish Egress & Entrainment**
 - Clarification of trigger and timing of hydraulic connectivity of floodplain, mining actions and time of year for surface water connectivity with adjacent mainstem river
 - June 1 or some other date that coincides with downstream (out migration) timing of NMF
 - Consistency with NOAA’s egress criteria
- **Emergency Actions**
 - Clarification on timelines and punitive approach for delays
 - Particularly for tide gates & culverts
 - Culverts – Timing for long-term solutions
 - Identify additional mitigation expectation for temporal loss and lengthy time delays (consistency with Habitat Mitigation Policy)
- **ODFW Climate Change and Green Energy Policy & Small Hydro Actions**
 - Passage OAR consistency with ODFW Climate Change Policy (OAR 635-900-0005 through 0020)
 - Turbine takes advantage of existing diversion operations
 - Look at low impact hydro classifications as possible template or examples.
 - Define green energy certified projects or other titles
 - No change in water use, amount, period of use, diversion methodology, etc.
 - Does not lengthen service life of AO or make structural/maintenance improvements to AO
 - Does not decrease upstream passage conditions for NMF
 - Barrier conditions no worse for NMF
 - False attraction not increased

- No greater risk of injury, such as fish jumping at flow release point
- For green energy projects that meet specific side boards
- Consider unique mitigation requirement alternatives
- Scalable to the project (size, duration, output)
 - Energy production potential, size, scale?
- Maintain in-proximity requirement
- Legacy effects of not providing passage
- Keep exclusion on mitigation required of the project (TDG example)
- **Low Water Fords**
 - Low flow passage (through or underneath)
 - Vented fords (high ratio of culvert to bankful width)
 - Unvented fords – over excavate and build at grade

STAKEHOLDER or INEREST GROUPS

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| <ul style="list-style-type: none"> • FPTF (RAC) • Ag (Farm Bureau, Cattleman’s and Dairy Industry) • Coastal Caucus • County Commissioners • Tide Gate owners • ODOT • Counties • ODA • Cities, Municipalities and AOC • Conservation Community • Angling (Recreational and Commercial) Community • Water Users | <ul style="list-style-type: none"> • Tribes • Oregon Water Congress • OWRD • Hydro • Hydro-Electric (PGE, Pacific Corp, etc) • Water Watch • Public Citizens (Culvert owners) • DOF • Regulatory Agencies (NOAA, USFWS, DSL, DEQ) • BLM, USDA • See previous task force (HB 3002) stakeholders |
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¹Rules Advisory Sub-Committee Members to Report to Rules Advisory Committee (RAC)

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| <ul style="list-style-type: none"> • Zak Toledo – Public-At-Large • Bill Cunningham - Public-At-Large • Ken Bierly - Public-At-Large • Steve Albertelli – Water User | <ul style="list-style-type: none"> • Kelly Moore - Fishing & Conservation • Terry Turner – Fishing & Conservation |
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¹ Self-appointed volunteer members from the Fish Passage Task Force Rules Advisory Committee. This sub-committee reports to the RAC.