

**Draft Revisions of ODFW's Public Process for 2013 Angling Regulation
Development
June 5th, 2011 Commission Meeting**

Background

Angling regulation development and subsequent rule adoption is a fundamental management tool Fish and Wildlife Agencies use to manage fish populations, associated fisheries and anglers. The angling regulation development process should encourage regulation stability and respond to significant issues related to either conservation or recreational use opportunities. ODFW utilizes a "Public Process" for angling regulation development that provides interested publics an opportunity to play a substantial role in shaping fisheries by soliciting public proposals for new or modified angling regulations every 4 years.

Our current "Public Process" provides a very useful outreach opportunity and is particularly effective at integrating public opinion into regulations shaping the social aspects of angling. However, the last several four-year angling regulation reviews have been bogged down by the high volume of public proposals that ultimately get rejected or are heavily influenced by special interest groups representing a minority opinion. Additionally, ongoing or contentious fish management issues were often more related to fish management policies, rather than establishing angling regulations designed to meet current fishery objectives or social needs. The new Public Process being proposed by ODFW is designed to focus on the "social" aspects of angling and keep fish management discussions and debates in their appropriate settings.

Public involvement in angling regulation development can also take place in forums other than the angling regulation process. Historically, the public has had opportunities to shape angling regulations through development of Fish Species Management Plans (Salmon, Steelhead, Trout and Warmwater Management plans) and Basin Fish Management Plans which cover a large portion of the state and had extensive public involvement. These planning efforts established the foundation and criteria for fishery management options such as managing for basic yield fisheries, quality and trophy fisheries as well as fisheries provided by hatchery fish, natural production, or a combination of the two. The public also has opportunities to shape angling regulations through working with local ODFW Fish staff or with Fish Division staff. Department staff often develops angling regulations based on public suggestions or recommendations.

Taking the fisheries management aspect out of the public angling regulation development process has the potential to create a void in the public's ability to influence fisheries management. Over the past decade, ODFW has used the development and implementation of Conservation Plans as directed by the Native Fish Conservation Policy (NFCP) to engage the public in helping shape fishery management. Conservation Plans identify management approaches to protect and restore native fish species while incorporating fishery management options to utilize natural production and hatchery production to meet the range of societal demands for fisheries. A key component of conservation plan development is the use of public

advisory Stakeholder Teams. In addition, ODFW provides extensive opportunity for public comment before plans are finalized and approved by the Commission.

Outlined below is ODFW's proposed Five-Step Public Process to revise the 4-year Angling Regulation Development Process in response to Commission direction. These changes are proposed to address the key issues of 1) early elimination of public proposals that do not meet review criteria, reducing work load and increasing transparency with the public regarding which proposals will be carried forward, 2) allowing for more meaningful public participation, and 3) keeping fish management decisions out of the angling regulation development process by establishing public proposal criteria that focus on "non-biological" aspects of angling while still allowing for public proposals which address critical biological or conservation needs.

The 5-Step Public Process for Angling Regulation Development

Step 1. ODFW Staff and Oregon State Police Proposal Development and Reviews

- Staff Proposals submitted October every 4th year (beginning October 2011)
- Staff development of regulation proposals
 - Biological issues: conservation, harvest management
 - Non-Biological: implement results of social surveys
- Fish Division and OSP review of staff proposals

Step 2. Public Proposal Development and Submission

- January - February (every 4th year beginning January 2012): Open for public proposals
- Public highly encouraged to work with ODFW/OSP staff on proposal development
 - Discuss merits of proposal concepts, receive initial staff review
 - Review alternative fish management strategies that meet biological needs and/or alternative strategies to achieve angler desires and expectations
- Emphasis on “social, non-biological”, but biological proposals also accepted as merited

Step 3. ODFW District/Fish Division/OSP review and screening of public proposals

- January – March (every 4th year beginning January 2012): Staff review of public proposals
 - District Review Teams review Zone proposals
 - Internal Regulation Review Team reviews statewide proposals (select Zone/Special regulations). District/OSP staff will also review all statewide rule proposals
 - Staff reviews based on standardized public proposal review criteria
- Review outcomes:
 1. Accept proposal: meets all review criteria; ODFW/OSP staff position not formally determined until after Public Meetings (August or September Commission meetings)
 2. Reject proposal: dropped from process. Public proposal does not meet review criteria; lacks social or biological merit. Specific reason for rejection will be listed
 3. Send proposal to Angling Regulations Review Board. Obtain additional social perspectives prior to final staff assessments (mid April Board meeting)
 - Staff make final determination based on ARRB reviews, reject or accept proposal

Step 4. Public Meetings

- Staff proposals and public proposals passing review presented at meetings in May (every 4th year beginning May 2012)
- Solicit public comment and assess level of public support for proposals (yes, no, maybe)

Step 5. Commission Actions

- August Commission Meeting – Informational
 - Commission direction on proposal categorization (A - adopt, B-further consideration, and C - reject)
- September Commission Meeting – Final Rule Making
 - Detailed presentation on category “B” proposals
 - Proposal adoption or rejection (potential “deferral”)

Overview of Main changes in Public Process

Pre-Process; Public Fish Management and/or- Public Regulation Scoping Meetings

Engaging the general public outside of the regulation setting process provides an opportunity for the public to discuss their views and opinions on current fishery management issues with ODFW and OSP staff and get immediate feedback. These public meeting forums also allow angling groups with potentially conflicting regulation proposals to discuss their fishery management issues and try to come to a consensus rather than submitting conflicting proposals. Department staff can discuss merits of various alternative fish management strategies designed to meet biological needs and/or alternative strategies to achieve angler desires and expectations.

Step 1. Staff and OSP Proposal Development and Review

No specific changes proposed other than a shortened submission period.

Step 2. Public Proposal Development and Submission

- Public highly encouraged to work with ODFW staff on proposal development
- Revised Public Proposal Form; with instructions and ODFW review criteria
- Shortened time period for submitting public proposals. January - February
- Emphasis on “social, non-biological” proposals

Step 3. ODFW Public Proposal Screening

This is the key revision in the new public process. Fish District Review Teams (District Fish Biologist, Assistant District Biologist, Watershed and Region managers, local OSP) and an ODFW Internal Regulation Review Team (IRRT; used for Statewide Rules, made up of Fish Division, Fish District and OSP staff) will recommend to Fish Division/OSP administrators which public proposals to move forward for the remainder of the process. It will be essential that staff thoroughly review public proposals, apply criteria consistently, and clearly articulate the rationale for rejection of proposals to project sponsors.

ODFW proposes to modify the existing review criteria established in Administrative Rule for angling regulation development (OAR 635-011-0050), providing criteria that are clear and understandable to staff and the public. Proposed revisions to the review criteria incorporate criteria used in previous ODFW Public Processes along with criteria used by other states to develop angling regulations. The intent was to keep criteria as simple as possible, but still provide staff the tools to adequately review proposals. Staff reviews will rely on existing ODFW Policies, Species Plans, Fish Management Plans, and scientific reviews or biological assessments to the highest degree possible.

The criteria outlined below were developed by staff with public input. The public generally supported the new criteria but wanted the review criteria made clear to the public at the start of the process and incorporated into the project proposal form.

Proposed ODFW Review of Criteria:

1. Is the proposal consistent with ODFW Fish Management and Conservation Policies?

- a) Is the proposal consistent with the Native Fish Conservation Policy (NFCP) and Fish Hatchery Management Policy (FHMP)?
- b) Is the proposal consistent with ODFW Species Management, Basin Fish Management, and Conservation Plans?
 - i. If not, is the proposed inconsistency a critical native fish conservation factor or can plans be modified to accommodate a potential rule change?

2. Is the proposal consistent with federal fish management plans and mandates?

- a) Is the proposal consistent with Endangered Species Act (ESA) Recovery Plans, Fisheries Management and Evaluation Plans (FMEPs), and Hatchery Genetic Management Plans (HGMPs)?
- b) For ocean salmon, is the proposal consistent with Pacific Fishery Management Council (PFMC) and National Marine Service (NMFS) ocean salmon regulation processes, criteria and management plans?
- c) For Pacific Halibut, is the proposal consistent with the International Pacific Halibut Commission's (IPHC) Catch Sharing Plan, NOAA Fisheries Service and PFMC regulation processes, criteria and management plans?
- d) For Sport Groundfish, is the proposal consistent with PFMC Federal Groundfish Fishery Management Plan which regulates sport groundfish in marine areas covering 3 to 200 miles offshore of Oregon.

3. Is the proposal within ODFW's rule-making authority?

The Commission's rule making authority is described in Oregon Revised Statutes 496.162 (Establishing seasons, amounts and manner of taking wildlife; rules) and 496.146 (Additional powers of the commission). Major elements of the Commission's rule-making authority for development of angling regulations are summarized below. The Commission has the authority to set angling regulations in the following categories:

- a) Regulations that prescribe the times, places and manner in which fish may be taken by angling and the amounts of each of those fish species that may be taken and possessed.
- b) Prescribing the amount of each wildlife species that may be taken and possessed in terms of sex, size and other physical characteristics.
- c) Prescribing such regular and special time periods and areas closed to angling of any fish species when the commission determines such action is necessary to protect the supply of such fish.
- d) Require the holder of any license, tag or permit issued pursuant to the wildlife laws (fishing regulations) to keep records and make reports concerning the time, manner and place of taking wildlife (includes fish), the quantities taken and such other information as the commission determines necessary for proper enforcement of the wildlife laws or to obtain information for use in wildlife management.

- e) Establish special angling areas or seasons in which only persons less than 18 years of age or over 65 years of age are permitted to angle.
- f) Establish special fishing seasons and bag limits applicable only to persons with disabilities.
- g) Regulations which prescribe such other restrictions or procedures regarding the angling or possessing of fish species as the commission determines will carry out the provisions of wildlife laws (fishing regulations).

The Commission **does not** have rule-making authority for:

- a) Changes in any fees associated with licenses or tags, revise tag or license structures, or add any new tags or licenses.
- b) Special regulations for licensed angling guides and/or their clients.
- c) Special regulations on the use of motor boats or boat motors on state waters.

4. Does the proposal establish need?

- a) Is protection needed? Is the rule necessary to balance harvest and conservation?
- b) Is the fishery resource being appropriately allocated to the various user groups?
- c) Is the proposed rule needed to meet an identified fishery or fish management objective (Basin Plan, 25-Year Plan, etc)?

5. Does the proposal make biological sense?

- a) Is the proposed regulation objective biologically feasible?
- b) Is the proposed regulation objective based on sound science?
- c) Can the biological response necessary to meet the intent of the regulations be reasonably expected to occur?
- d) Is there an acceptable level of biological risk?

6. Is the proposal understandable?

- a) Is the proposed rule language clear and concise?
- b) Does the proposal use terminology that is consistent with existing regulations?

7. Is the proposal enforceable?

- a) Has the proposal been tried in the past and found to be un-enforceable?
- b) Can OSP adequately enforce the proposed rule?
- c) Is the proposed rule supported by affected anglers?

8. Regulation Context

- a) Does the proposal result in more complex or simplified regulations?
- b) What is the past regulation history, has the proposal been considered before? If so, have circumstances changed that allow this proposal to be considered at this time?
- c) How long has the current angling regulation been in place?
- d) What are the potential economic impacts of the proposal?

A revised Public Proposal form will be developed which lists the new ODFW review criteria and specific instructions on completing a public proposal. The form will include specific

questions that are designed to provide information necessary for staff reviews. Questions will be based on ODFW review criteria along with some “basic elements” of angling regulation proposals.

ODFW Public Proposal Reviews and Outcomes

- Fish Division will have the final say on public proposals but will work with District Review Teams to ensure consistency among Review Teams and clear communication of reviews between Districts and Fish Division.
- An ODFW Internal Regulation Review Team (IRRT) will be developed to conduct reviews of statewide angling regulations and select Zone regulations (as necessary to assist District Review Teams). All Statewide proposals will also go to District Review Teams for review. The IRRT will include staff from each ODFW Region, Fish Division, OSP and the Angling Regulation Coordinator.
- Public Proposals that pass staff review will be incorporated into the Public Meeting Packet. Project sponsors will be notified by ODFW’s Angling Regulation Coordinator of review decisions (proposal approved or rejected), the scheduled public meeting(s) where the proposal will be presented and discussed by staff, and actions taken on the proposal at the two scheduled Commission meetings.
- **Rejected public proposals will be dropped from the Public Process and project sponsors notified of final ODFW review and basis for proposal rejection.** If project sponsors disagree with staff reviews, they can petition the Commission for a rule change. A well established rationale for proposal rejection and direct communication with project sponsors may reduce need for further action by public.
- Rejected public proposals dealing with purely social regulations that could have merit will be sent to the Angling Regulations Review Board to gather additional public perspectives on the proposed rule prior to making a final staff assessment.

Public Angling Regulation Review Board’s Role in Angling Regulation Development

The function and role of the Public Angling Regulation Review Board (ARRB) would change significantly in the proposed process. In the past, the ARRB determined which proposals went forward in the process based on a list of established criteria specified in Administrative Rule. In the revised Public Process the ARRB is advisory only. Members will be selected from the current Inland Sports Fishery Advisory Committee with the addition of potential members from the general angling public. Most of the social proposals which have potential merit could qualify to go before the ARRB, but it is likely that only a small subset will actually require additional social review to assist in staff analysis. ARRB reviewed proposals would mainly be proposals with limited public opinion or social background but are worthy of some consideration rather than rejecting outright.

Step 4. Development of Public Meeting Packet and Public Meetings.

ODFW’s approach to public meetings to discuss proposed regulation changes will be similar to past processes, but there would likely be a reduced number of proposals to present at these meetings. Details on the public meetings are listed below.

- The locations and dates of key public meetings will be scheduled in advance and included in the Public Process insert in the 2012 Oregon Sport Fishing Regulations. Additional meetings may be scheduled if needed to obtain public input on local angling regulation issues.
- Public meetings will be held during May 2012. Fish Division staff will schedule and facilitate meetings, and along with representatives from Fish Districts/Regions, present proposed staff and public angling regulation proposals. Local OSP will also attend public meeting if necessary.
- Objectives of the public meetings are to obtain public comment on staff proposals and public proposals passing staff review. Public proposals not passing staff review will not be presented at public meetings but staff will be prepared to respond to public inquires on failed proposals.
- Fish Districts will present staff and public proposals in their fish management area, and Fish Division staff will present any statewide proposals, or applicable Zone Regulations. The priority is to cover local proposals before moving onto statewide proposals. If time permits, staff will take public comment on proposals in other areas of the state or answer questions on rejected proposals.
- Proposals will be classified into categories during the public meetings as follows; wide public support, little or no public support, or mixed public support. (Yes, No, Maybe). Staff will also try to determine the level of public support beyond just a show of hands.
- Following all public meetings, staff will compile public comments and include them in the August Commission Packet along with initial classification of staff and public proposals into the three main categories, A – Adopt, staff and public support; B – Worthy of further consideration, mixed support; and C – Reject, little or no public support and no staff support.

Step 5. Commission Meetings; August Informational Only and September Rule-Making

August Commission Meeting – Informational Only

This step is similar to previous process, except staff will have a reduced the volume of public proposals for the Commission to address. The remaining public proposals may have significant fishery implications and likely to require similar levels of analysis as in the past. The public meetings should identify most “Key Issues” and focus additional staff time for proposal analysis prior to Commission meetings.

Fish Division staff will present a preview of the 2013 angling regulation proposals at the August Commission meeting. Staff positions are included on proposals which have been adequately reviewed by staff and OSP. Positions on select category “B” proposals may be postponed pending further analysis and presented at the September Commission meeting.

- Focus of the August Commission meeting will be to review findings from the Public Process through the August Commission meeting. This will include an overview of the regulation changes being considered for adoption (Category A proposals), rejection (Category C proposals), and “Key Issue” Category B proposals (mixed support).
- The Commission will be asked to provide direction on staff recommendations regarding proposal classifications and have the option to reclassify proposals for further consideration (reclassify C proposals to B, or A proposals to B). Proposals classified as A or C by the Commission will be carried forward to the September Commission meeting for rule making,

with the recommendation that Category A is adopted and Category C is rejected without further discussion.

- Following the August meeting, staff will determine positions on any outstanding category B proposals and consider “deferring” proposals if there is merit to the proposal but insufficient information (biological or social) to develop a sound staff recommendation (see approach to Deferred Proposals below).
- Fish Division will develop the September Commission presentation working with District staff and include more in-depth assessments of the Classification (B) proposals.

September Commission Meeting – Final Rule Making

- Rule-making and follow-up staff presentations will focus on the following areas:
 - **Category A** proposals (have staff and public support) recommended for adoption.
 - **Category B** proposals (mixed support) with follow-up presentations and Commission decision on whether to pass, reject or defer.
 - **Category C** proposals (reject) should be minimal.
 - **Deferred** proposals would be recommended as necessary (generally rare), consistent with ODFW’s ability to staff and fund.
- Final results of Public Process; Commission rule adoption-rejection are sent to project sponsors, posted on ODFW’s website, and made available to interested anglers.

Deferred Public Proposals – New Review Option Proposed. During the Public Process, proposals could be submitted that have significant merit but insufficient information to make an informed recommendation. These proposals would be formally rejected, but identified as “deferred” proposals for reconsideration at a later date, after further study and investigation. Examples from previous processes would include the McKenzie River bait ban, closure of Agency Lake to redband trout retention, and proposals on statewide level crappie daily bag limits. Staff anticipates this would be used on rare occasions.