

1 **Fish Restoration and Enhancement Program**

2 **635-009-0200**

3 **Purpose**

4 These rules guide the operation and project selection of the Fish Restoration and Enhancement Program  
5 as authorized under [~~the Oregon Fisheries Restoration and Enhancement Act of 1989 (Oregon Laws~~  
6 ~~1989, Chapter 512)] **ORS 496.280 through 496.291.**~~

7  
8 Stat. Auth.: ORS 512

9 Stats. Implemented: ORS 512

10 Hist.: FWC 86-1989, f. 8-31-89, ef. 9-1-89

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12  
13 **635-009-0205**

14 **Definitions**

15 The following definitions shall apply:

16 [~~(1) "Act" means the Oregon Fisheries Restoration and Enhancement Act of 1989.~~]

17 **(1)** [~~(2)~~] "Board" means the Fish Restoration and Enhancement Board appointed by the Commission.

18 **(2)** [~~(3)~~] "Commission" means the Oregon Fish and Wildlife Commission.

19 [~~(4) "Council(s)" means Regional Advisory Council(s).]~~

20 **(3)** [~~(5)~~] "Department" means the Oregon Department of Fish and Wildlife.

21 **(4)** [~~(6)~~] **"Director" means the Director of the Oregon Department of Fish and Wildlife.**

22 **(5)** "Enhancement Project" [~~means any activity to~~]**includes:**

23 (a) **Angler Access;** [~~Increase recreational or commercial opportunities or access to fish resources;~~]

24 (b) **New fishways and screens;** [~~Increase fish production; or]~~

25 (c) **Habitat;** [~~Improve fish management.]~~

26 **(d) New hatchery equipment and technology;**

27 **(e) Public education;**

28 **(f) Aquatic inventories.**

29 **(6)** [~~(7)~~] "Grant Agreement" means a legally binding contract between the Department and a project  
30 sponsor detailing project conditions and financial support on a form prescribed by the Department.

31 **(7)** [~~(8)~~] "Project" means restoration project or enhancement project [~~as defined here]~~ **that provides a**  
32 **benefit to the recreational fisheries or commercial fisheries.**

33 **(8)** [~~(9)~~] "Project Sponsor" means any public[,]**organization or** private, nonprofit, [~~or STEP]~~ organization  
34 **applying for, or** implementing a project [~~under the Act~~].

35 **(9)** [~~(10)~~] "Public Organization" means any public agency in the State of Oregon, including but not limited  
36 to agencies of the State, counties, municipalities, special districts, school districts, port districts,

37 cooperating agencies pursuant to ORS 190.110 (e.g. Tribes and U.S. Government), and public  
38 institutions of higher education.

39 **(10)** [(44)] "Private Nonprofit Organization" means any organization recognized as such under Section  
40 501(c)(3) of the Internal Revenue Code for purposes of charitable tax exemption.

41 **(11)** [(42)] "Restoration Project" [~~means any activity to~~] **includes:**

42 (a) **Modification of existing fishways and existing screens** [~~Rehabilitate or restore fish~~  
43 ~~production facilities (including fish liberation equipment)];~~

44 (b) **Hatchery restoration** [~~Rehabilitate or restore fish passage or protection facilities];~~

45 (c) **Liberation equipment.** [~~Collect information on physical and biological characteristics of~~  
46 ~~streams, lakes or estuaries; or information on recreational or commercial use of fisheries.~~

47 [(13)] "Region" means ~~Department Administrative Region (i.e., Northwest, Southwest, Central,~~  
48 ~~Northeast, Southeast and Columbia).~~

49 **(12)** [(44)] "STEP Organization" means any group or organization participating in the Salmon Trout  
50 Enhancement Program.

51 **(13)** [(45)] "~~Technical Advisory Committee~~" **"Internal Review Team"** means [~~the team of~~] Department  
52 personnel providing assistance to the Board, including review and evaluation of proposed projects.

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54 Stat. Auth.: ORS 512

55 Stats. Implemented: ORS 512

56 Hist.: FWC 86-1989, f. 8-31-89, ef. 9-1-89

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59 **635-009-0210**

60 **Fish Restoration and Enhancement Board**

61 **(1)** The Fish Restoration and Enhancement Board shall:

62 (a) [(4)] Review and evaluate proposed [~~restoration and enhancement~~] projects; [~~submitted for~~  
63 ~~funding under this Act~~].

64 (b) [(2)] Consult with the **internal review team**; [~~affected Regional Advisory council, if one exists,~~  
65 ~~concerning projects affecting that region.~~]

66 (c) [(3)] Recommend fish restoration and enhancement projects to the Commission consistent  
67 with available funds. [~~In so doing, the Board shall:~~]

68 **(2) In recommending projects to the Commission, the Fish Restoration and Enhancement Board**  
69 **project shall:**

70 (a) [Recommend a mix of projects that provide a balance between restoration and enhancement  
71 benefits;

72 (b) Recommend projects that are to be implemented by STEP and nonprofit organizations  
73 engaged in **approved** restoration and enhancement activities [~~authorized by the Act~~];

74 (c) Encourage projects that result in obtaining matching funds from other sources; [~~and~~]

75 (d) Recommend projects benefiting recreational fishing and the commercial fishing industry in the  
76 same proportion as revenues, **including from other funding sources**, ~~[derived from the Act]~~ **as set**  
77 **forth in ORS 496.289(5)**];

78 ~~(e) [(4) The Board may:]~~ **Recommend conditions for project approval, as appropriate;** and [-]

79 ~~(f) [(5) The Board may:]~~ **Recommend funding a project in whole or in part, as appropriate;** [-]

80 **(3) In making appointments to the Fish Restoration and Enhancement Board**, the Commission shall  
81 consider recommendations from the State Fish and Wildlife Director. **The Commission shall appoint**  
82 **one member to represent the public, three members to represent recreational fishing, and three**  
83 **members to represent the salmon industry. For the commercial salmon industry representatives,**  
84 **it is preferred that troll, gillnet, and fish processing interests each be represented except when the**  
85 **Department is unable to find a representative for any one of such interests. For recreational**  
86 **fishing representation a diversity of demographics, fishing interests, and geographic distribution**  
87 **is preferred.**

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90 Stat. Auth.: ORS 512

91 Stats. Implemented: ORS 512

92 Hist.: FWC 86-1989, f. 8-31-89, ef. 9-1-89

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95 **635-009-0215**

96 **Regional Advisory Councils**

97 **Reserving number**

98 ~~[The Board shall periodically hold Regional Advisory Council meetings in each of the Department's~~  
99 ~~Administrative Regions.~~

100 ~~(1) Council meetings shall be open to the public.~~

101 ~~(2) A review of proposed or approved projects shall be provided at each meeting.~~

102 ~~(3) The public shall have the opportunity to comment on projects.~~

103 ~~(4) Meeting locations shall be rotated among cities within each region to assure convenient citizen/staff~~  
104 ~~access.~~

105 ~~(5) Department staff shall arrange for and publicize meeting times and locations in consultation with the~~  
106 ~~Board.~~

107 ~~(6) One or more Board members shall attend each Council meeting and report back to the full Board.]~~

108

109 Stat. Auth.: ORS 512

110 Stats. Implemented: ORS 512

111 Hist.: FWC 86-1989, f. 8-31-89, ef. 9-1-89

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115 **635-009-0220**

116 **Project Application**

117 (1) Any public, or private nonprofit [~~or STEP~~] organization may propose a project for funding.

118 (2) Proposed projects shall be submitted to the Board in writing and on forms provided by the [~~Board~~]  
119 **Department.**

120 (3) **Except as allowed by the Board, a** [A] separate application is required for each proposed project or  
121 project site.

122 (4) Each project must have explicit goals, methods of achievement, beginning and ending date, estimated  
123 cost and estimate of contribution to recreational and[~~or~~] commercial fisheries.

124 (5) Incomplete applications may be returned to the project sponsor for completion.

125 (6) Project proposals [~~from~~] **for** STEP [~~organizations~~] **projects** shall be accompanied by an approved  
126 STEP Project Proposal form **or confirmation from the Department that it is an approved STEP**  
127 **activity.**

128 (7) The **Department,** Board or Commission may require any additional information it deems necessary in  
129 order to evaluate the project proposal.

130  
131 Stat. Auth.: ORS 512  
132 Stats. Implemented: ORS 512  
133 Hist.: FWC 86-1989, f. 8-31-89, ef. 9-1-89  
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136 **635-009-0225**

137 **Evaluation of Projects Submitted for Funding**

138 (1) All projects shall be evaluated by the Board and [~~Technical Advisory Committee~~] **Internal Review**  
139 **Team** for consistency with fish management goals and objectives as set forth in OAR 635-007-0501  
140 through 635-007-0830, and species [~~and/or~~] management plans, **as applicable,** adopted by the  
141 Commission.

142 (2) A project shall not be recommended for funding if, based on review by the **Department or the** Board,  
143 the project:

- 144 (a) Is inconsistent with the intent of [~~the Act~~] **ORS 496.280 through 496.291;**
- 145 (b) Is contrary to sound biological principles;
- 146 (c) Proposes to use inappropriate methods to accomplish project objectives;
- 147 (d) Is inconsistent with state land use planning goals and local acknowledged land use plans; [~~or~~]
- 148 (e) Violates goals, policies, rules, species or basin management plans adopted by the Commission.

149 (3) Project proposals shall be evaluated according to their potential impact on all fish species, the  
150 environment, and contribution to the resource.

151  
152 Stat. Auth.: ORS 512  
153 Stats. Implemented: ORS 512  
154 Hist.: FWC 86-1989, f. 8-31-89, ef. 9-1-89

155 **635-009-0230**

156 **Commission Approval**

157 (1) The Commission shall review the Board's recommendations, and may approve or disapprove any or  
158 all projects recommended for funding.

159 (2) No project may commence without the Board's recommendation and prior ~~[written]~~ approval by the  
160 Commission[;] ~~[The Commission may attach such terms and conditions to project approval as it deems  
161 necessary, including but not limited to:]~~

162 **(3) The Commission may attach terms and conditions to project approval as it deems necessary**  
163 **to ensure the project meets the requirements of subsection (2) of OAR 635-009-0225 or other laws**  
164 **and regulations.**

165 ~~[(a) No project may commence without prior written approval by the Commission;~~

166 ~~(b) The project sponsor shall agree to complete the project as approved by the Commission and  
167 within the time frame specified in the Grant Agreement;~~

168 ~~(c) The project sponsor shall obtain all necessary water rights, access agreements, easements, use  
169 permits or any other permits needed to undertake the project. Copies shall be provided to the  
170 Commission prior to commencing the project;~~

171 ~~(d) The project sponsor shall file a written request for permission to amend or expand the project  
172 construction or the construction time schedule including the rationale for the requested change.  
173 Proposed modifications shall be submitted to and approved by the Board and Commission prior to the  
174 beginning of any work proposed in the modification;~~

175 ~~(e) The project sponsor shall submit a project report at the completion of the project describing the  
176 work done;~~

177 ~~(f) The project sponsor shall monitor and report, as determined by the Commission, the long-term  
178 effectiveness of the project;~~

179 ~~(g) The project sponsor shall allow Commission or Board members, or their designated  
180 representatives, access to the project to monitor and/or evaluate the project;~~

181 ~~(h) The project sponsor shall account for funds distributed by the Department, using project expense  
182 forms provided by the Department;~~

183 ~~(i) The project sponsor shall maintain the project for a period of time as deemed appropriate by the  
184 Commission.]~~

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186 Stat. Auth.: ORS 512

187 Stats. Implemented: ORS 512

188 Hist.: FWC 86-1989, f. 8-31-89, ef. 9-1-89

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191 **635-009-0235**

192 **Revocation of Project Approval**

193 (1) The Commission may revoke its approval of a project if, after consultation with the Board, it  
194 determines that:

195 (a) Implementation of the project has exceeded or is inconsistent with the approved project proposal;

196 or

197 (b) The project sponsor has violated any term or condition imposed on the project; or

198 (c) Continued operation of the project may adversely affect fish populations in, above, or below the  
199 project site; or

200 (d) The project does not meet its proposed objectives; or

201 (e) The project is inconsistent with current Department goals, policies or management plans.

202 (2) Proceedings to revoke approval of a project shall be conducted in accordance with ORS 183.413 to  
203 183.550.

204 (3) The revocation of a project's approval shall automatically invalidate any Department permits issued for  
205 such project as of the date of revocation.

206 (4) Revocation of approval for a project is in addition to, and not in lieu of, other penalties provided by law.

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208 Stat. Auth.: ORS 512

209 Stats. Implemented: ORS 512

210 Hist.: FWC 86-1989, f. 8-31-89, ef. 9-1-89

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213 **635-009-0240**

214 **Grant Agreement**

215 (1) Project sponsors, other than the Department, shall enter into a Grant Agreement with the Department  
216 prior to undertaking the project, ~~[to the Commission]~~ **The project sponsor shall obtain all**  
217 **necessary water rights, access agreements, easements, use permits or any other permits**  
218 **needed to undertake the project. Copies shall be provided prior to commencing the project.**

219 (2) ~~[(2)]~~ No funds shall be disbursed under a Grant Agreement until the Department receives satisfactory  
220 evidence that necessary permits and licenses have been granted and required documents submitted.

221 (3) ~~[(3)]~~ Advance funds may be released upon presentation of a detailed estimate of expenses for a time  
222 period specified in the Grant Agreement. No additional funds will be released until all receipts for  
223 expenditures of a previous fund release are submitted.

224 (4) ~~[(4)]~~ **The project sponsor shall account for funds distributed by the Department, using project**  
225 **expense forms provided by the Department.** Funds may be released upon presentation of a  
226 completed Fund Release Request Form accompanied by proof of completion of specific work  
227 elements of the project as identified in the Grant Agreement. Proof of completion may be made  
228 through presentation of paid receipts of invoices for materials of contracted labor, or inspection  
229 reports.

230 (5) [~~(5) Except for grants of less than \$2,000, the Department shall retain ten percent of project funds until~~  
231 ~~the report required in OAR 635-009-0230(2)(e) has been submitted and the project has been evaluated~~  
232 ~~for completion and compliance with the Grant Agreement]~~ **The project sponsor shall agree to complete**  
233 **the project as approved by the Commission and within the time frame specified on the Grant**  
234 **Agreement.**

235 **(6) The project sponsor shall file a written request for permission to amend or expand the project**  
236 **or the time schedule including the rationale for the requested change. Proposed modifications**  
237 **shall be submitted and approved prior to the beginning of any work proposed in the modification.**

238 **(7) The project sponsor shall submit a project report at the completion of the project describing**  
239 **the work done.**

240 **(8) The project sponsor shall allow Commission, Board members, or Department staff, access to**  
241 **the project to monitor and evaluate the project.**

242 **(9) The project sponsor shall maintain the project for a period of time as deemed appropriate by**  
243 **the Commission.**

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246 Stat. Auth.: ORS 512  
247 Stats. Implemented: ORS 512  
248 Hist.: FWC 86-1989, f. 8-31-89, ef. 9-1-89  
249