

OFFICE OF THE SECRETARY OF STATE  
 BEV CLARNO  
 SECRETARY OF STATE  
 A. RICHARD VIAL  
 DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION  
 STEPHANIE CLARK  
 DIRECTOR  
 800 SUMMER STREET NE  
 SALEM, OR 97310  
 503-373-0701

**NOTICE OF PROPOSED RULEMAKING**  
 INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 635  
 DEPARTMENT OF FISH AND WILDLIFE

**FILED**

10/03/2019 9:05 AM  
 ARCHIVES DIVISION  
 SECRETARY OF STATE

FILING CAPTION: Conservation Plan for Lampreys

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 12/06/2019 5:00 PM

*The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.*

CONTACT: April Mack  
 503-947-6233  
 April.H.Mack@state.or.us

4034 Fairview Industrial DR SE  
 Salem, OR 97302

Filed By:  
 April Mack  
 Rules Coordinator

HEARING(S)

*Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.*

DATE: 12/06/2019

TIME: 8:00 AM - 5:00 PM

OFFICER: Oregon Department of Fish  
 & Wildlife Commissioners

ADDRESS: Oregon Department of Fish  
 & Wildlife Headquarters  
 4034 Fairview Industrial DR SE  
 Salem, OR 97302

NEED FOR THE RULE(S):

These rules are being proposed to adopt the Department's CPL. These rules describe the major components of the plan, which are required under the Native Fish Conservation Policy (OAR 635-007-0505(5)). The proposed rules are believed to be fully compatible with legislative direction on the goals of wildlife management in Oregon.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

1. Staff report prepared for the Oregon Fish and Wildlife Commission hearing on 12/06/2019.

A copy of the rules and the other documents relied upon for this rulemaking [the above document(s)] are available from the Oregon Department of Fish and Wildlife, Wildlife Division, 4034 Fairview Industrial Drive SE, Salem, Oregon 97302-1142, between the hours of 8:00 a.m. and 4:00 p.m., on normal working days, Monday through Friday.

FISCAL AND ECONOMIC IMPACT:

No major fiscal or economic effects are expected to result from plan approval. Small businesses are unlikely to be impacted at this point in time. Lampreys are not considered an economic commodity in the context of these rules. The commercial sale of lampreys and their use as bait for fishing for other species is prohibited in Oregon. Additional future efforts outside of the CPL could potentially increase or decrease the impacts to small businesses.

Small businesses are not anticipated to have any additional record keeping and/or administration costs. No additional equipment, supplies, labor or administration are anticipated.

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**COST OF COMPLIANCE:**

*(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).*

The state agencies that would be affected by the adoption of these rules are:

The Oregon Department of Fish and Wildlife (ODFW) through staff research, management activities, and policy implementation. The proposed research, monitoring, and evaluation in the Conservation Plan for Lampreys (CPL) entail minimal changes to ODFW. It is expected that initial CPL implementation can be completed by continuing existing ODFW efforts or leveraging existing staff and funds. However, there are a number of strategies and actions as well as research, monitoring, and evaluation measures that are significant and will take additional funds and staff. Where additional funding would be needed the agency plans to seek external funding and or collaborate with partners. Though this plan does not currently present any additional expenditures for ODFW; it could indirectly lead to new mandated impacts that would have to be implemented through new rules and regulations. While Oregon State Police (OSP) is affected by plan enforcement, these changes will not affect enforcement procedures, requirements, or expenditures.

No units of local government are expected to be affected by these rules. No significant changes from the current levels of any local agencies' operations or expenditures are anticipated as a result of the adoption of these rules.

The public is not expected to encounter any major direct economic impacts resulting from the approval of the CPL. ODFW plans to continue collaboration with tribes, watershed councils, US Fish and Wildlife Service, and others as the agency moves forward with implementing the CPL. Improving information and making progress on lamprey conservation in Oregon provides ecological and cultural benefits to the public. There is a potential for more detailed take reporting measures for Pacific Lamprey at Willamette Falls. Harvest report information would include: dates, times, number of people, and the number of hours of harvest effort per person. This would not entail a direct cost increase for lamprey harvest activities, which are currently free, it could result in additional time taken by harvest participants to ensure ODFW receives this information.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

In October 2019, public correspondence and testimony was received in two public hearings from members of the public. This plan has been in development for a number of years with active involvement of stakeholders, the public, tribes, and state and federal agencies.

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WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

No. These rules implement OAR 635-007-0505(5), which had a rule development committee. Also, the rules are derived from a conservation plan that has had review and input from a wide range of technical and other governmental entities, which, while not a formal Rule Advisory Committee process, fulfilled a similar role. Finally, these rules are primarily aspirational with respect to fish management, and do not implement specific regulations on the public or other entities.

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ADOPT: 635-500-6780

RULE SUMMARY: These rules describe the primary components of the Department's Coastal, Columbia, and Snake Conservation Plan for Lampreys in Oregon (CPL), including the current status, desired status, limiting factors, management strategies, and research needed to conserve four lamprey species.

CHANGES TO RULE:

#### 635-500-6780

Implementing the Coastal, Columbia, and Snake Conservation Plan for Lampreys in Oregon.

(1) Policy. The Coastal, Columbia, and Snake Conservation Plan for Lampreys in Oregon (CPL; State of Oregon 2019, available at the Department's Salem office or [www.dfw.state.or.us](http://www.dfw.state.or.us)) describes the State's strategy for protecting and enhancing Oregon populations of Pacific lamprey, Western river lamprey, Western brook lamprey, and Pacific brook lamprey (herein, "lampreys") along the Oregon coast and within the Columbia and Snake River basins of Oregon. The CPL identifies management strategies to address factors limiting these lampreys, and research, monitoring, and evaluation (RME) needed to fill data gaps and inform future status assessments for them. These management strategies and RME are for ODFW to implement in coordination with other entities and landowners. The CPL is based on the premise that collaborations with partners will be essential to implementing conservation actions identified in the CPL. This rule describes the Commission's contribution toward this collective effort and directs the Department's implementation of the CPL. This rule describes the Department's role in implementing the CPL consistent with the Department's statutory authorities and the Native Fish Conservation Policy (OAR 635-007-0502 through 635-007-0505). This rule is not intended to be a rigid recipe, but rather to identify the range of opportunities the Department should pursue and how the effectiveness of those opportunities should be evaluated, following the template first established in the Native Fish Conservation Policy.¶

(2) Description of Species Management Units (SMUs) and population strata. The SMU for each of the lampreys addressed in the CPL is the state of Oregon. Each of these SMUs is comprised of up to seven population strata (listed in Table 2.3 of the CPL).¶

(3) Desired Status. ¶

(a) The desired status for Pacific lamprey is to maintain and improve the current status of all population strata such that they can provide greater ecological, economic, and cultural benefits than are currently provided. The specific desired statuses for the population strata and SMUs are listed in Table 4.1 of the CPL. These statuses can be achieved by conducting management strategies and actions that improve the outcomes for existing measurable

criteria described in Tables 3.1 and 3.6 of the CPL, and gathering additional information related to all measurable criteria described in Table 3.1 of the CPL; ¶

(b) The immediate desired status for Western river lamprey, Western brook lamprey, and Pacific brook lamprey is to improve the available information so that their current population strata statuses can be assessed in the future. This can be achieved by gathering additional information related to measurable criteria described in Table 3.1 of the CPL. Once current statuses for population strata are better understood, it can be determined whether the long-term desired status for these species of providing ecological, economic, and cultural benefits is being met. ¶

(4) Current Status. The current status of Pacific lamprey, Western river lamprey, Western brook lamprey, and Pacific brook lamprey SMUs at the time of the adoption of this rule is described in Chapter 3 and summarized in Tables 3.6 and 3.8 of the CPL. The available biological attributes, criteria, and metrics described in Chapter 3 and summarized in Tables 3.6 and 3.8 of the CPL are adopted by reference into this rule. ¶

(5) Primary Limiting Factors. ¶

(a) Numerous factors contribute to the gap between current and desired status of population strata for lampreys. The limiting factors, that can be managed, generally causing the gap between current and desired status for lampreys are broadly defined as: ¶

(A) Habitat access (upstream and downstream passage); ¶

(B) Water quantity; ¶

(C) Water quality; ¶

(D) Physical habitat (stream and floodplain degradation); and ¶

(E) Predation by other species (particularly non-native fishes). ¶

(b) Primary and secondary limiting factors are identified for population strata of each species in Table 5.2 of the CPL. Staff will continue to help revise and identify new management actions addressing these factors to aid in reaching desired status. Staff may analyze the limiting factors at a finer, more localized scale when selecting or prioritizing management actions for specific areas within population strata. These analyses may find primary and secondary factors different at a local scale than what was found at the population strata scale. ¶

(6) Management strategies. Eight management strategies to address limiting factors are identified in Chapter 6 of the CPL. Staff shall consider and attempt to implement these management strategies as mechanisms to reach the desired status. These near-term (0 - 5 years), intermediate term (5 - 10 years), and long term (10 - 20 years) strategies include: ¶

(a) Educate and raise awareness about lampreys; ¶

(b) Improve passage and screening for all lampreys, across all life stages; ¶

(c) Continue existing strategies to protect and restore freshwater habitats for native fish; ¶

(d) Continue existing strategies to conserve water for native fish, and consider specific needs for lamprey; ¶

(e) Support or initiate translocation of adult Pacific Lamprey into formerly occupied (but currently inaccessible) habitats, where warranted; ¶

(f) Establish in-water work Best Management Practices specific to lampreys to inform and provide guidance on key time periods for conducting in-water work, how to avoid lampreys, and how to salvage them; ¶

(g) Implement existing and modified angling regulations and other management actions on non-native fishes known to depredate lampreys such that their impact on lampreys is reduced; and ¶

(h) Continue existing management practices on pinnipeds designed to mitigate predation by these animals on native fish. ¶

(7) Adaptive Management. The Department shall employ adaptive management principles within its statutory authority in support of achieving the desired status goals for lampreys. The Department's adaptive management will proceed as funding and staffing allow, and include: ¶

(a) Research. The Department shall support high priority research that addresses uncertainties related to the status of population strata and lampreys and implementation of management strategies and actions needed to achieve desired status; ¶

(b) Monitoring. The Department shall continue to identify, implement, and support monitoring needed to assess the status of lampreys relative to desired status criteria, existing and potential limiting factors, future threats, and

management strategies and actions;

(c) Evaluation. The Department shall identify and support evaluations needed to utilize research and monitoring data to identify or improve research and monitoring needs, determine the effectiveness of management strategies and actions in achieving intended outcomes, track and summarize information, and re-assess status;

(d) Review;

(A) The Department shall regularly review the results of research, monitoring, evaluation, and other available scientific information as it is developed. Based on these reviews, management strategies and actions and research, monitoring, and evaluation programs will be modified as necessary, appropriate, and within the Department's statutory authority to attain desired status goals. The Department shall coordinate with other agencies or entities, as appropriate, to advance or modify management strategies and actions and research, monitoring, and evaluation programs needed to support attainment of the desired status goals;

(B) In 2040, and every 20 years thereafter, the Department shall conduct a complete status assessment, based on measurable criteria utilized in the CPL or developed afterward, of all population strata and lampreys covered in the CPL;

(C) Additional limited (i.e., specific population stratum or lamprey) or complete (i.e., all population strata and lampreys) status assessments, based on measurable criteria utilized in the CPL or developed afterward, will be conducted if research, monitoring, or evaluation information indicates significant new or potential declines;

(D) The Department shall review, and modify as appropriate, the CPL if a future status assessment determines a currently viable population stratum has become non-viable;

(E) The Department shall review, and modify as appropriate, the CPL if any of the lampreys in the CPL become listed under the federal ESA;

(e) Reporting. As available, research, monitoring, evaluation, and review information related to implementing the CPL will be aggregated and posted on a publicly-accessible Department website.

(8) Impact on Other Native Fish Species. Management strategies identified in the CPL are likely to be beneficial to other native fish species present in the population strata because these strategies focus on restoring natural processes. New or modified actions shall consider impacts to other native species, as appropriate, to minimize harm and optimize benefits.

Statutory/Other Authority: 496.138, 496.146, 506.119

Statutes/Other Implemented: 506.109, 506.129