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Attachment 2

ARCHIVES DIVISION
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NOTICE OF PROPOSED RULEMAKING INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 635
DEPARTMENT OF FISH AND WILDLIFE

FILED

11/05/2021 8:39 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Rogue–South Coast Multi-Species Conservation and Management Plan

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 12/17/2021 9:00 AM

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.

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Salem, OR 97302

Filed By:
Lisa Kingsley
Rules Coordinator

HEARING(S)

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

DATE: 12/16/2021

TIME: 9:00 AM - 2:00 PM

OFFICER: Oregon Fish and Wildlife Commission

ADDRESS: Oregon Department of Fish and Wildlife
4034 Fairview Industrial Dr SE
Salem, OR 97302

SPECIAL INSTRUCTIONS:

The Department is voluntarily holding a public hearing on December 16th from 9:00 AM -2:00 PM to receive oral testimony on the Rogue South Coast Multi Species Conservation and Management Plan. Written comments received prior to December 17, 9:00 AM will be included in the record.

Note: Because of the rapidly changing situation with COVID-19, all or portions of this hearing may be conducted virtually. Information will be posted on our website at

<https://www.dfw.state.or.us/agency/commission/minutes/>

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TIME: 8:00 AM - 5:00 PM

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ADDRESS: Oregon Department of Fish and Wildlife
4034 Fairview Industrial Dr SE
Salem, OR 97302

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NEED FOR THE RULE(S)

The rules are needed to implement the Rogue–South Coast Multi-Species Conservation and Management Plan (RSP).

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

1. Draft RSP and staff report prepared for the Oregon Fish and Wildlife Commission hearing on 12/17/2021.

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, Fish 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:

There are fiscal impacts expected and a potential for positive long-term economic impacts as a result of the proposed Rogue–South Coast Multi-Species Conservation and Management Plan.

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).

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s).

(A). The state agencies that would be affected by adoption of these rules are the Oregon Department of Fish and Wildlife (ODFW) and Oregon State Police (OSP). For OSP, the level of enforcement in the RSP area is not expected to change, thus changes to the levels of OSP workload or expenditures are not expected. For ODFW, the majority of the actions to implement the RSP can be completed with existing levels of ODFW staff and funding. It is expected that initial RSP implementation can be completed by continuing existing ODFW efforts and leveraging existing staff and funds. The RSP calls for several new fishing authorizations in the RSP geographic scope, mandatory harvest reporting by anglers in this area, and new reports to be developed by the Department. ODFW expects that these new items will be largely absorbed under existing systems (i.e., the Electronic Licensing System [ELS]) and staff responsibilities. Small costs may be necessary to modify ELS to include the new requirements.

However, there are a number of strategies and actions that are significant and will take additional funds and staff. The costs of the actions are detailed on Table 23 of the RSP. Other costs (e.g., habitat restoration and protection, facility construction) were not estimated. Where additional funding would be needed the agency plans to shift effort from elsewhere within the agency, seek external funding, collaborate with partners, or collect fees from new authorizations.

(B). Units of local government have the potential to be indirectly affected by these rules. Changes in the number or distribution of recreational trips in the RSP area could result from the proposed rules and could mean changes in parking fee and moorage fee revenues charged by the Port Authorities and other local governments. Those changes cannot be estimated given the limited available data, though no significant changes from the current levels of any local agencies' operations or expenditures would be expected to result from the adoption of these rules.

(C). The public could be affected by the adoption of these rules. The implementation of the RSP could affect the number of angler days or trips in the RSP area. Economic impacts are associated with angler trips because the anglers will spend money on gas, food, lodging, guides, etc. during their trips. These trip-related expenditures could be spent near the angler's residence, the point of access on a waterbody in the RSP area, and anywhere in between. A portion of the angler trip-related expenditures would be recirculated through the local economies where it was spent (i.e., the multiplier effect). An Oregon-specific estimate for the average level of expenditures per angler trip can be derived the 2011 U.S. Fish and Wildlife Survey state overview at \$63/trip, \$76/trip in 2021 dollars.

While there is currently no in-depth economic analysis of the proposed RSP, there is previous work conducted by The Research Group, LLC for ODFW's Coastal Multi-Species Conservation and Management Plan (CMP). This analysis

estimated that CMP actions would result in the overall positive economic contributions to freshwater fisheries angler activity with an increase of approximately \$5.5 million in total personal income (about 15% increase from status quo) and another \$0.2 million in total personal income related to hatchery operations. These findings indicated that the overall impact of the CMP would be somewhat greater economic contributions to the CMP area from angler activities. However, a variety of factors, such as run sizes, weather, and gas prices, also determined the level of angler trips on any given year, so it cannot be predicted in any precise way the economic impact of the CMP, or how this might directly relate to RSP actions.

The last comprehensive recreational fishing economic valuation study of the region, the Rogue River Sport Fisheries Economic Valuation Study, used angler surveys to estimate that Rogue anglers spent about \$16.6 million within the Rogue River Basin on fishing trips; in 2021 dollars this represents approximately \$32 million in spending with \$12.6 million by non-local residents. This work indicated that there is significant economic activity in the region driven by the sport fisheries. While we do not have an estimate of the economic impact at this time, it is expected that the actions required to implement the proposed RSP have potential to result in additional positive economic contributions (in comparison to the status quo of no action) for the long-term future of the recreational fisheries in the region. Strategies and actions aimed at managing risk to RSP populations could present negative economic impacts in the short-term, but long-term sustainable management that promotes the ability of future generations to enjoy both use and non-use aspects of the fishery in aggregate is likely to outweigh these short-term impacts.

In addition to these potential indirect economic effects, the public may encounter direct economic impacts resulting from new fishing authorizations proposed in the RSP. The authorizations would need Legislative action for a fee to be charged for them and would increase the costs for those that plan to participate in the winter steelhead fishery in the future if implemented. Proceeds from the new authorizations would be directed toward monitoring to support sustainable management that provides positive long-term economic contributions. ODFW plans to continue collaboration with tribes, watershed councils, NOAA Fisheries, US Fish and Wildlife Service, and others as the agency moves forward with implementing the RSP. Another public benefit that will accrue over time is increased information and data on the species in the region, allowing for improved decision making and progress on native fish conservation in Oregon, which provides ecological and cultural benefits to the public.

References

Olsen D., Richards J. Carter C, and Jones R. Rogue River Sport Fisheries Economic Valuation Study. Sponsored by The Rogue Valley Council of Governments, Oregon Department of Fish and Wildlife, U.S. Bureau of Land Management, and U.S. Forest Service. December 1994.

The Research Group, LLC. Economic Implications of the Coastal Multi-Species Conservation and Management Plan. Prepared for Wild Salmon Center, Portland, Oregon. February 2014.

U.S. Bureau of Labor Statistics. CPI Inflation Calculator. <https://data.bls.gov/cgi-bin/cpicalc.pl>. Retrieved September 29, 2021.

U.S. Fish and Wildlife Service and U.S. Census Bureau. 2011 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation, 2011.

(2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s);

The RSP proposes several new fishing authorizations, which would need Legislative action for a fee to be charged for them. There is also the potential for angling regulations to change (after the first five years of implementation if the staff proposal to maintain current regulations for that initial period is adopted). Additionally, the plan calls for significant

local work to be conducted in the plan area (e.g., habitat restoration, research, construction). . All of these actions could affect small businesses either at the time of adoption or in the future. Overall, the RSP could potentially increase or decrease the impacts to small businesses. The types of small businesses that have the potential to be impacted include recreational fishing guides, food and beverage stores, gas stations, sporting goods stores, general merchandise stores, accommodation businesses, food services and drinking places, and contractors operating in the counties of Coos, Curry, Douglas, Klamath, Jackson, and Josephine that depend on revenues from induced economic impacts from the recreational fisheries and habitat restoration related to the species managed under this plan. The number of small businesses with the potential to be affected cannot be estimated.

(b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s);

No additional administrative/recordkeeping compliance costs to small businesses are anticipated at this time.

(c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

No additional compliance costs of this type to small businesses are anticipated at this time.

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

In October 2018, ODFW began developing the RSP. The plan has been in development for a number of years with active involvement of stakeholders, the public, tribes, and state and federal agencies. Small business owners were included as stakeholders (e.g., guides, shop owners). Public correspondence and testimony were received from stakeholders and members of the public, which included a randomized angler survey, a series of six Stakeholder Team Meetings for each of two Stakeholder Teams in 2020, a public comment period and public meetings in 2021, and several public Commission meetings. The plan is written to be fully compatible with legislative direction on the goals of fish and wildlife management in Oregon.

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

The proposed rules were developed without a formal Administrative Rule Advisory Committee, but the Stakeholder Teams functioned similarly – informing the Department about what would be included in the RSP. At the Commission hearing, public correspondence and testimony is accepted into the record as part of the rulemaking process.

ADOPT: 635-500-6785

RULE SUMMARY: The proposed rules relate to implementation of the Rogue–South Coast Multi-Species Conservation and Management Plan (RSP), which addresses fish management needs for the conservation of anadromous salmonids along the south coast of Oregon, including the Rogue River, as well as fish management actions relative to the present and future fishing opportunities in the area. The RSP will address the following Species Management Units (SMU): winter steelhead, summer steelhead, coho salmon, and coastal cutthroat trout. These SMUs include populations from the Elk River to the California border, including the Rogue River basin. The plan will provide conservation and management guidance for these SMUs, and will meet requirements of Oregon's Native Fish Conservation Policy.

CHANGES TO RULE:

635-500-6785

Rogue-South Coast Multi-Species Conservation and Management Plan

The Rogue-South Coast Multi-Species Conservation and Management Plan (RSP) (State of Oregon 2021, attached) implements the State's strategy for protecting, enhancing, and utilizing Oregon populations of winter steelhead, summer steelhead, coho salmon, and coastal cutthroat trout along the Oregon coast from Elk River near Cape Blanco to the Winchuck River.

(1) Policy. The RSP is based on the premise that the Oregon Plan for Salmon and Watersheds provides the best vehicle for securing partnerships, both private and governmental, to successfully implement the actions called for in this plan. This rule describes the Oregon Fish and Wildlife Commission's (Commission) contribution toward this collective effort and directs the Department's implementation of the RSP. This rule also describes the Department's role in implementing the RSP consistent with the Department's statutory authorities, Native Fish Conservation Policy (OAR 635-007-0502 thru 635-007-0505) and Climate and Ocean Change Policy (OAR 635-900-0001 thru 635-900-0020). The rule is not intended to be prescriptive 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 Populations. The Rogue-South Coast winter steelhead, summer steelhead, coho, and coastal cutthroat trout SMUs (Plan SMUs) which are addressed in the RSP are comprised of geographical strata and independent populations, as listed in RSP Table 2.

(3) Desired Status. The desired status for the Plan SMUs is to maintain or improve SMU status as described in RSP Table 7 and to maintain or improve outcomes for populations or strata based on measurable criteria as described in RSP Table 8. Achieving desired status for SMUs, strata, and populations will increase the ecological, economic, and cultural benefits they provide and increase their resilience to climate and ocean change.

(4) Current Status. The status of the Plan SMUs at the time of the adoption of this rule is described in the RSP. The Current Status chapter Overall Status Assessment Approach section and RSP Table 4 summarize the biological attributes, criteria, and metrics used to assess the status of each SMU. Those biological attributes, criteria, and metrics are adopted by reference into this rule.

(5) Primary Limiting Factors.

(a) Numerous factors contribute to the gap between current and desired status of populations comprising the Plan SMUs. Marine survival associated with ocean conditions strongly influences productivity and abundance for Plan SMUs. Although ocean conditions are not manageable at the scale of this plan and are thus not considered a primary limiting factor, attention to other limiting factors will be heightened during periods of poor ocean conditions.

(b) Manageable limiting factors generally causing the gap between current and desired status for the Plan SMUs are broadly defined as:

(A) Habitat access (upstream and downstream passage; access to off-channel habitat);

(B) Water quality;

(C) Water quantity;

(D) Physical habitat structure/complexity; and

(E) Interactions with other species (including predators).

(c) Primary and secondary limiting factors are identified for each population within each SMU in the RSP Limiting Factors chapter, Table 9. The Department will continue to help revise and identify new management actions addressing these factors to aid in reaching desired status. The Department may analyze the limiting factors at a finer, more localized scale when selecting or prioritizing management actions for specific areas within populations. These analyses may find primary and secondary factors different at a local scale than what was found at the SMU or population scale.

(6) Management Strategies. Management strategies to address limiting factors for each population are identified in the RSP Management Strategies and Actions chapter. The Department will consider and attempt to implement these management strategies designed for the Plan SMUs as a whole, and for constituent populations as applicable, as mechanisms to reach the desired status. Short-term (1 to 5 years) and long-term (1 to 25 years) strategies are identified in seven categories:

(a) Habitat:

(A) Promote and implement a tiered approach to habitat restoration efforts and funding to achieve maximum benefit for plan species. Prioritize restoration actions, including actions identified in Coho Strategic Action Plans, in the following order:

(i) actions to address primary limiting factors in population areas with an independent coho salmon population;

(ii) actions to address primary limiting factors in other population areas; and

(iii) actions to address secondary limiting factors for all population areas.

(B) Within the Rogue and Coastal strata, identify watersheds that will be key to supporting plan populations in the future, and focus habitat protection and restoration activities towards these watersheds.

(C) Consistent with the Department's mission, policies, and laws, continue to coordinate with and advise other agencies, local governments, and regulatory entities to ensure that habitat protection processes and actions provide the best possible outcomes for native fish.

(D) Exhibit leadership in coordinating the implementation of actions to adapt to climate change.

(E) Encourage citizen involvement to help implement habitat protection and restoration actions.

(F) Promote beavers and beaver-related pond habitat to increase water quantity and stream complexity, primarily

through riparian restoration and helping landowners learn to live with beaver impacts.

(b) Other Species:

(A) Support programs that reduce conflict between predators and anglers.

(B) Assess predator impacts and feasibility of management options with an over-arching science approach across predators.

(C) Implement a strategic approach to reducing impacts from non-native minnows, with a focus on water quality to favor salmon and steelhead. Remove non-native minnows where possible to reduce impacts on native fish.

(D) Prohibit the introduction of non-native fin fish species into flowing waters, and develop and support programs designed to decrease illegal introductions of non-native species.

(c) Hatchery:

(A) Manage hatchery programs to provide optimal harvest opportunities and meet mitigation goals while being consistent with desired status targets for wild populations.

(B) Manage hatchery programs to minimize risk to the long-term adaptive capacity of wild populations.

(C) Manage for wild fish emphasis or mixed emphasis in the appropriate Management Areas as outlined in RSP Figure 14 and obtain Commission approval for starting new or eliminating existing hatchery programs in a Management Area relative to those in RSP Table 14 (excluding educational and research programs and conservation actions).

(d) Fishing:

(A) Manage recreational fisheries to provide harvest and angling opportunities consistent with conservation of naturally produced steelhead, coho salmon, and cutthroat trout, and achievement of desired status goals for each SMU.

(B) Manage fisheries proactively for the future and respond to changing environmental conditions.

(C) Collect appropriate data to manage wild fisheries.

(e) Research and Monitoring:

(A) Identify and implement sustainable monitoring approaches that align with management and status determination needs.

(B) Monitor appropriate metrics to document changing climate and ocean conditions and the impacts of those changes on plan species and their habitats.

(C) Prioritize research that resolves critical uncertainties about SMU status and management strategy effectiveness.

(D) Conduct research to reduce key uncertainties related to the response of plan species and their habitats to climate and ocean change.

(f) Outreach/Enforcement:

(A) Encourage angler stewardship to reduce impacts without adding layers of regulation and increase cooperation with Oregon State Police to help enforce existing regulations.

(B) Increase and diversify public participation in fishing and native fish conservation.

(C) Improve communication with the public; provide more information through more diverse avenues of communication and collect information to inform management.

(D) Encourage citizen involvement to help implement habitat protection and restoration actions, and encourage landowner participation in these critical actions.

(g) Facilities:

(A) Invest in infrastructure that best supports the Department's mission.

(B) Develop and maintain public access to increase fishing opportunity and improve angler experience.

(7) Adaptive Management. The Department shall employ adaptive management principles within its statutory authority in support of optimizing fisheries and achieving the desired status goals for the SMUs. The Department's adaptive management of the SMUs will include five elements: research; monitoring; evaluation; a feedback loop; and reporting.

(a) Research. The Department shall support high priority research that addresses uncertainties related to SMU or population status and management strategies and actions needed to optimize fisheries and achieve desired status as funding and staffing allow. Future research needs may be identified, or research needs described at the time of plan adoption may be modified, as a result of periodic assessments of the RSP and with the development and update of research plans for the Department and Oregon Hatchery Research Center.

(b) Monitoring. The Department shall continue to identify, implement and support monitoring needed to assess the status of SMUs, strata, or populations relative to desired status criteria, evaluate habitat status trends and understand fishery characteristics as funding and staffing allow. Future monitoring needs may be identified, or monitoring needs described at the time of plan adoption may be modified, during periodic assessments of the RSP and with the development and update of monitoring plans for the Department.

(c) Evaluation. The Department shall identify and support evaluation needed to apply research and monitoring results to modify monitoring and management, re-assess status and determine the effectiveness of management

strategies and actions in achieving their intended outcomes as funding and staffing allow. Future evaluation needs may be identified, or evaluation needs described at the time of plan adoption may be modified, as a result of periodic assessments of the RSP.

(d) Feedback Loop. The Department shall review the results of reports and assessments identified in OAR 635-500-6785(7)(e) and modify management strategies and actions as appropriate and within its statutory authority based on the review results. The Department shall implement the Adaptive Management processes and recommend to other agencies or entities, as necessary, appropriate modifications to management strategies and actions needed to optimize fisheries and support attainment of the desired status goals for each SMU. This feedback shall include refinement of management actions, research, monitoring and evaluation programs and desired status criteria based on the best available scientific information.

(A) The Department shall propose modifications to the RSP if the listing status under the federal Endangered Species Act changes for any species addressed in the RSP.

(B) If a status assessment described in OAR 635-500-6785(7)(e) indicates deterioration of populations or SMUs, or a noticeable lack of progress toward desired status, the Department will determine if the strategies being used to achieve desired status need to be substantively changed or modified. If so, a public process will be undertaken, with Commission approval necessary for such changes.

(C) The annual review of monitoring data necessary to produce annual reports described in OAR 635-500-6785(7)(e) will serve as an early warning system that will inform the need for additional or modified research, monitoring, evaluation, or management actions. If review of annually collected data or other information appears to show that measurable criteria identified in Table 8, Action III.B.1, or Table 17 of the RSP are not being met, the Department will determine if modified actions are necessary to meet them and will implement warranted actions. The modification of management actions will be detailed in annual reports.

(e) Reporting. Annual and periodic evaluations of RSP implementation and SMU status shall be made available to the public. The Department shall prepare annual reports and conduct a 12-year status assessment of SMUs and populations. Additional assessments will be conducted as necessitated by new information or significant population declines.

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

Statutory/Other Authority: ORS 496.138, 496.146, 506.119, 506.129, 496.162

Statutes/Other Implemented: ORS 506.109, 506.129