

Fish and Aquatic Life Use Updates 2022

Summary

Rulemaking Advisory Committee Meeting #1

Jan. 27, 2022

Virtual Meeting (Zoom)

List of Attendees

Advisory Committee Members:

Emily Bowes, Sarah Cloud, James Fraser, Liz Hamilton, Megan Hill, Steve Kucas, John Schaefer, Chris McCabe, Sharla Moffett, John Runyon, Susan Smith, Glen Spain, Mike Eliason

Agency Advisors: Brian Bangs, Jon Bowers, Rebecca Anthony, Michelle Maier

DEQ Staff: Angela Rowland, James McConaghie, Mailea Miller-Pierce, Debra Sturdevant, Connie Dou, Trina Brown, Aron Borok, Justin Green, Michele Martin

Interested Persons:

Gordon Kurtz, Camille Flinders, Bill Harris, Thomas Whittington, Scott Thorsgard, Raven Susu-Mago, Toby Smith, Chris Desiderati, Jackie White, Matt Robart, Julia Crown, Jeffrey Pettey, Melissa Brown, Mark Healy, Dave Shively, Tommy Cianciolo, Ken Yates, Julia Bond, Andrew Matsumoto, Ben Kirsch, Christina Brow, Lori Steele, Marika Sitz, Jordan Ramis, Rian Hooff

List of handouts and presentation notes

- Meeting Agenda
- Advisory Committee Charter
- Presentation Slides

Agenda

Time	Topic
1 pm	Introductions, Meeting Agenda, and Meeting Objectives
1:20pm	Rulemaking Advisory Committee Charter Review
1:40pm	Break (5 mins)
1:45pm	Project Overview and Scope
2:45pm	Break (10 mins)
2:55pm	History of Aquatic Life Use Designations in Oregon
3:25pm	Introduction to ODFW Fish Habitat Distribution Database
3:55pm	Break (5 Mins)
4pm	Introduction to Critical Habitat Designations



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DEQ is a leader in restoring, maintaining and enhancing the quality of Oregon's air, land and water.

Meeting Summary

I. Introduction and Welcome Presentation

- Connie Dou welcomed the group.
- Trina Brown discussed logistics for the meeting.
- The meeting agenda was presented by Angela Rowland.
- RAC Members and DEQ staff introduced themselves.

II. Advisory Committee Charter Presentation

Angela Rowland gave an overview of the Rulemaking Advisory Committee (RAC) purpose and the Charter.

- The roles of committee members and ground rules for the Advisory Committee were explained.
- Reviewed the objective for the rulemaking: *“To amend administrative rules designating aquatic life use subcategories associated with Oregon’s water quality standards for temperature and dissolved oxygen based on the most current and best available scientific data and objective information.”*
- Future Meetings Format, Schedule, and timeline.
- Meeting Materials, Resources, and what to expect as being a part of the Advisory Committee.

There was a question from the Committee whether the RAC would have a chance to review the technical support information before the rule was proposed for public comment. DEQ clarified that the final draft of the technical document (TSD) will be available to the RAC after the technical peer review is complete and before the public comment period. As James indicated, we will be discussing the results from the technical workgroup with the RAC over the next few meetings.

III. Project Goals Presentation

James McConaghie presented on the rulemaking project goals objectives.

- DEQ is updating the basin-specific use designations in OAR-340-041-101 to OAR-340-041-345 associated with the temperature and dissolved oxygen standards to incorporate the best available and up-to-date data. Improvements in GIS mapping capabilities also allow more accurate identification of the correct and appropriate uses on the maps.
- There is a need to designate the use subcategories in the dissolved oxygen standard in rule. This is considered a high priority in the Triennial Review workplan.
- Main project topics include: 1) updating the existing use designations, including the 'fish use' and 'spawning use' maps associated with the temperature rule, 2) formally designating use subcategories associated with the dissolved oxygen rule in the regulations for the first time, 3) minor amendments to the definitions section (OAR-340-041-0002) and 4) updating the pH criterion for the Crooked and Trout subbasins of the Deschutes Basin in OAR-340-041-0135.
- The project Timeline was presented.
- The project background on Water Quality Standards, Designated Uses, and Use Subcategories was presented.

Steve Kucas said that the Portland Water Bureau would have more discussions individually with DEQ about the issues surrounding the Bull Run and decide what if any information would be helpful for discussion with the advisory committee.

IV. Technical Development Process Presentation

James McConaghie presented on the technical workgroup membership and Technical Workgroup Purpose.

- A list of the primary data sources was provided and explained.
- The Technical evaluation process and work of the technical workgroup was explained and is outlined in the presentation.

There was a question from the RAC whether the TSD or other documentation from the technical workgroup will be made available at some point. DEQ replied those materials will be presented at future meetings and provided for discussion. The RAC will have two opportunities to provide input on the TSD and technical background, once before the public comment period begins and again during the formal public comment period.

V. Project Scope Presentation

James McConaghie presented on the scope of the rulemaking project and specific topics within the scope.

- The rulemaking has a wide scope- the aquatic life use is designated for essentially every waterbody in the state and there is potential for changes to the designations in every basin.
- The main topic areas are the Temperature Use Subcategory and Map Updates and the new Dissolved Oxygen Use Subcategory designations
- The temperature use subcategory and map updates include a statewide review and update of fish use subcategory designations based on new and updated data sources, primarily the Oregon Department of Fish and Wildlife's (ODFW) fish habitat distribution data and data from the federal services. Bull Trout use designations will conform with the final USFWS critical habitat rule. EPA requested that DEQ consider core-cold water designations for cold water refuge tributaries that meet that criterion as identified in the Columbia River Cold Water Refuges Plan.
- The designation of aquatic life use subcategories for the dissolved oxygen standard will largely be consistent with DEQ's established implementation procedures. However, there is a need to better identify active resident trout spawning habitat.
- Miscellaneous rule amendments include clarification or removal of terms and definitions for "Cold/Cool/Warm-water aquatic life" in OAR-340-041-0002 that conflict with those terms and definitions in the dissolved oxygen standard OAR-340-041-0016; and revisions to pH Criteria for the Crooked River and Trout Creek sub-basins of the Deschutes Basin in OAR-340-041-0135.

VI. History of Aquatic Life Use Designations Presentation

Debra Sturdevant provided a presentation on the History of Oregon's Aquatic Life Use Subcategory Designations for temperature and dissolved oxygen

There was a question from the observers if there is an effort in place to be able to distinguish temperature-related effects from dissolved oxygen-related effects that are due to temperature in listing. If the water body exceeds either the temperature or dissolved oxygen criteria it would be listed. Warmer temperatures can impact dissolved oxygen levels. So yes, there is an impact from temperature on attainment of

dissolved oxygen standards but that is typically addressed through the Total Maximum Daily Load (TMDL) process and not during the assessment.

The RAC asked how DEQ's update process relates to the mapping of "essential salmonid habitat" by Dept. of State Lands? It would be good to avoid creating conflicting designations. DEQ understands that the Department of State Lands (DSL) essential habitat designation process is largely for the purpose of identifying time frames that dredge and fill work can be done in streams. State lands did reach out to DEQ for GIS data showing our temperature use subcategory designations and locations of tributaries providing cold-water refuge for the lower Willamette River during their essential salmonid habitat designation process. Both the DSL essential salmonid habitat designations and DEQ's aquatic life use designations rely on ODFW fish habitat distribution database as the primary data source.

VII. Oregon Fish Habitat Distribution and Aquatic Life Use Timing Presentation

Jon Bowers of the Oregon Department of Fish and Wildlife presented information about ODFW's Fish Habitat Distribution (FHD) database and life-stage timing tables.

- The database shows habitat that is either currently or historically used by certain fish species and is maintained as an authoritative source for fish habitat distribution in Oregon.
- Primary Data Sources for the FHD are a hydrographic base from ODFW's 1:24,000 scale mapping project, compilation of large scale habitat inventory and monitoring efforts by state and federal wildlife agencies, periodic targeted reviews of data (essential salmonid habitat, barriers), and case by case updates.
- Jon presented ODFW's process for updating the database, the stewardship plan, data standard business rules, and key considerations.
- Life stage timing data scope. 2003 Data compared to 2021 Data. In 2003, the data was primarily assembled for the anadromous zones and for salmonid species. New zones with more complete statewide coverage were added between 2003 and 2021. The number of species with timing information increased from mainly anadromous (ocean-going) salmon and steelhead to include other native salmonids (resident trout and Mountain Whitefish), Bull Trout, and lamprey.
- Timing data is organized by timing units, which are typically sub-basins or watershed but, in some cases, the main stems and tributaries have different timing data. In addition, there is timing data for different species and runs, life history, life stage, activity status, and activity intensity.

The RAC asked whether it matter if lesser periods of use is just by hatchery fish versus wild fish? ODFW does not differentiate hatchery origin from natural production within timing information. Refer to DEQ for how it may relate to WQS. DEQ says in general, no, we do not distinguish between hatchery and wild fish in terms of use designations. We may distinguish native v. non-native species or runs in some cases.

With respect to temperature how does DEQ think about the contributions from other bodies of water? The way that DEQ considers the uses, is that once we have assigned a use, we would designate waters upstream of the use for the same criteria because the upstream waters are contributing to the use downstream. This is for the year round uses. DEQ does not always carry a designation above a reservoir if there is no presence of a species upstream due to an obstruction. But for the most part DEQ continues designations upstream until there is a more sensitive use.

Is the “Oregon Fish Habitat Distribution and Barriers” GIS map tool the primary publicly viewable database that this rulemaking will consider? And if so, could Jon pull it up and show folks how to use it as an example? It is the primary data sources for fish habitat distribution in Oregon. The life-stage timing tables are also a data source but not necessarily considered a database. The FHD database is available on a web-viewer here: https://nrimp.dfw.state.or.us/FHD_FPB_Viewer/index.html

VIII. Critical Habitat Presentation

Brian Bangs of the U.S. Fish and Wildlife Service (USFWS) provided an overview of the federal critical habitat designation.

- Described what critical habitat is and what it is not.
- Critical habitat is designated within the geographical area occupied by a species when it is listed, considering the physical and biological features needed for the life processes of the species.
- Special management considerations or protections for critical habitat.
- Unoccupied areas are sometimes included in critical habitat if they are necessary for the recovery of the species.
- See the Fish and Wildlife Service ECOS website for information on the Bull Trout critical habitat designation: <https://ecos.fws.gov/ecp/species/8212>

IX. Wrap Up and Adjournment

James McConaghie presented information about the timeline and topics for future meetings. The next RAC meeting will be in late February or early March. We will discuss the decision rules for the temperature use designations and make the proposed temperature use updates available on GIS online maps. In addition, we will discuss the Aquatic Life Use Definitions and Crooked River pH criteria revisions, and an Overview of DEQ's approach to use change justification and supporting documentation.

- Next Steps: Before the next meeting a draft meeting summary will be provided to the group with one week allowed for review and corrections. The meeting summary will be posted to the rulemaking website. The RAC members can also provide any comments or corrections on the Advisory Committee Charter by the next meeting. Send all comments via email to: aquaticlife.2022@deq.oregon.gov

The RAC asked When it will see DEQ's proposed changes to the rules/tables/maps? DEQ will provide the proposed temperature changes on the GIS tool for the RAC to review and we will talk about the process to develop those at the next meeting. The dissolved oxygen information will be provided and discussed for the third meeting in April.

How will those proposed changes to the designations be presented? For example, proposed changes to OAR text is often presented with strikethrough, like a legal blackline document. Will this be a side-by-side of existing and new maps? DEQ has the ability to compare the previous and newly proposed use in each waterbody. GIS layers will be available that show the overall updated designations, and DEQ will provide additional layers that identify and highlight the use changes. There will be GIS data products posted online that will help stakeholders identify where use designations have changed.

The RAC wanted to confirm whether DEQ only seeking feedback on this rulemaking's fiscal impact and effect on small businesses (per ORS 183.333), but not feedback on whether DEQ's scientific data is accurate or complete? Input on the fiscal and economic impact of the proposed rule is the primary role of a RAC, but

members can also provide comment on the results of the technical workgroup development process. After technical peer review is complete the TSD will be provided to the RAC for review and comment before DEQ finalizes it for public comment.

Meeting was Adjourned at 4:30pm.

Alternative formats

DEQ can provide documents in an alternate format or in a language other than English upon request. Call DEQ at 800-452-4011 or email deqinfo@deq.state.or.us.