

DRAFT DIV 33 RULE CHANGE DOCUMENT

[Deleted text in brackets] **new text bold and underlined**

690-033-0120

Determination of Consistency with the Fish and Wildlife Program

(1) To determine whether a proposed use is consistent with the Fish and Wildlife Program, the Department shall consult with the Northwest Power **and Conservation** *[Planning]* Council, ODFW, U.S. Fish and Wildlife Service, National Marine Fisheries Service, Indian tribes and appropriate local governments. If the Department determines that a proposed use of water is inconsistent with the Fish and Wildlife Program and cannot be conditioned to achieve consistency, the application shall be presumed to impair or be detrimental to the public interest.

(2) The applicant shall provide information to show compliance with the following standards which will form the basis for permit conditions:

(a) The proposed use does not involve appropriation of direct streamflow during the time period of April 15 to September 30, except as provided in OAR 690-033-0140;

(b) The proposed use does not involve hydraulically connected groundwater with potential for substantial interference as listed in OAR 690-009 *[Division 9 of this Chapter]* during the time period of April 15 to September 30, except that which is artificially recharged or as otherwise provided in OAR 690-033-0140;

(c) The proposed use complies with screen design, installation, operation specifications and passage requirements as listed in *[ORS 498.248 through 498.268 and ORS 509.600 through 509.630;]* **ORS 498.301 through 498.346 and ORS 509.580 through 509.910;**

(d) The proposed use complies with existing state and federal water quality standards; and

(e) The proposed use complies with water use measurement, recording and reporting required by the Director.

(3) Based on the consultation in section (1) of this rule, the proposed use may be further conditioned so that, if the riparian area is disturbed in the process of developing a point of diversion, the riparian area is restored or enhanced.

(4) If a proposed use is not consistent with the Fish and Wildlife Program, the applicant may propose mitigation compatible with sections (2) and (3) of this rule. The Director shall determine if the proposed use with mitigation is consistent with the Fish and Wildlife Program. For purposes of mitigation, the *[ODFW Fish and Wildlife Habitat Mitigation Goals and Standards, OAR 635-415-0030 adopted November 13, 1991]* **ODFW rules regarding Implementation of Department Habitat Mitigation Recommendations, OAR 635-415-0025 adopted April 21, 2000 and effective May 1, 2000** shall be followed.