

January 8, 2007

MEMORANDUM

TO: Oregon Watershed Enhancement Board

FROM: **Melissa Leoni, Senior Policy Coordinator**

SUBJECT: **Agenda Item O: Salmon Season State of Emergency Rules
January 24-25, 2007 OWEB Board Meeting**

I. Introduction

This report seeks Board approval of proposed administrative rules that establish grant application and award criteria for restoration, inventory and data collection, outreach, and project development grants that support priority fish habitat enhancement and that are able to create work opportunities for fishers displaced by the 2006 reduction in salmon stocks.

II. Background

On April 24, 2006, Governor Kulongoski issued Executive Order No. 06-06, declaring a state of emergency for Oregon's coastal counties impacted by the fishing restrictions. A copy of the Executive Order is contained in Attachment A. In response to the Executive Order, OWEB staff developed five concepts that (1) create immediate opportunities to employ displaced fishers in salmon recovery-related activities; (2) develop future employment opportunities for fishers for additional salmon recovery restoration work; and (3) significantly expand state and local efforts to recover salmon populations on the Oregon coast.

In response to legal advice, staff developed temporary (emergency) administrative rules to give OWEB the ability to apply award preferences related to the employment of displaced fishers, providing fish habitat benefits, and addressing identified watershed needs. The Board met by conference call on Thursday, July 20, 2006 and adopted the temporary rules. (Attachment B) These rules expire January 21, 2007.

In addition to giving OWEB the ability to apply these preferences to the 2006 Salmon Season Grant program, the rules contained a provision that these preferences may also be applied to other OWEB grants. At the September 2006 Board meeting, rather than apply the preferences to the October 2006 grant cycle, the Board allocated an additional \$500,000 of capital funding to continue the 2006 Salmon Season Grants through January 21, 2007.

To continue to apply these award preferences beyond the January 21, 2007 expiration of the temporary rules, the Board would need to adopt permanent administrative rules. After discussion at the September 2006 meeting, the Board authorized staff to begin permanent rulemaking.

III. The Need for Permanent Rules

OWEB continues to receive new applications for this program. We expect a continuing interest and need for this program into the foreseeable future. As of the date of this staff report, OWEB

has received 19 applications (one was a resubmission). Thirteen (13) applications have been funded—six restoration, one project development, and six inventory and data collection—with the promise of employing a total of 47 fishers. See Attachment E for a tabular description of received and funded applications. To date, OWEB has funded \$1,189,893 in restoration, project development, and inventory and data collection projects. Applications are still being received and processed. As of December 22, 2006, the list of interested fishers stands at 127: 61 are owners, 13 are operators, 42 are crew, and 11 are family members. Fishers have signed up from Clackamas (1), Coos (36), Curry (23), Lane (7), Lincoln (50), Linn (1), Marion (1), and Tillamook (8) counties.

IV. Permanent Rulemaking Process

Staff developed a proposed set of permanent rules (Attachment C) based on the temporary rules adopted by the Board and from the Board discussion at the September meeting. The proposed permanent rules contain the application criteria of the adopted temporary rules, but have been moved from the OWEB Grant Program (Division 5) to their own division (Division 7) of Chapter 695. This separation was done because the criteria in the proposed permanent rules only apply during the current state of emergency, and to facilitate the addition of rules pertaining to the purpose of these grants and program definitions.

Staff did not engage a rules advisory committee in drafting the proposed administrative rules because staff consulted with the Governor's Office, Oregon Salmon Commission, local watershed councils, soil and water conservation districts, Oregon State University Extension Sea Grant, and affected fishers in developing the temporary rules and grant program. These individuals and organizations are the stakeholders who would have been invited to participate in a rules advisory committee.

The proposed rules were filed with the Secretary of State on October 13, 2006, and printed in the Oregon Bulletin on November 1, 2006. Notice was mailed and emailed to our contact lists and posted on the OWEB web site.

V. Public Comment

The public comment period began on November 15, 2006, and closed at 5:00 p.m. on December 6, 2006. A public hearing was held at the Hatfield Marine Science Center in Newport on November 30, 2006. Five people attended the hearing and two testified. Three additional individuals and/or organizations provided written comments on the rules before the end of the public comment period. A summary of the comments and the staff response to those comments is Attachment D. Based on the comments received, staff do not recommend making any changes to the proposed rules.

VI. Recommendation

Staff recommend the Board approve the administrative rules as shown in Attachment C.

Attachments

- A. Executive Order
- B. July 20, 2006 Temporary Administrative Rules
- C. Proposed Permanent Administrative Rules
- D. Public Comments Received and Agency Response
- E. 2006 Salmon Season Grants Status Report