



January 21, 2025

Oregon State Marine Board
435 Commercial St. NE., STE 400
Salem, OR 97301
jennifer.cooper@boat.oregon.gov

Re: Trout Unlimited Recommends Changes to Proposed Boating Rules in Upper Rogue (*Updated*)

Dear Chair Jackson and Members of the Board,

Trout Unlimited (TU) is a non-profit dedicated to conserving coldwater fish (such as trout, salmon, and steelhead) and their habitats. We have more than 350,000 members and supporters nationwide, including thousands of members in Oregon. TU and its members are committed to caring for Oregon rivers and streams so future generations can experience the joy of wild and native trout and salmon.

We have staff and programs based in the Rogue River valley, and we are deeply invested in protecting and restoring the basin's native fish. In recent years, TU has completed multiple projects in the Little Butte Creek watershed in particular (an important spawning tributary of the Upper Rogue, entering just upstream of TouVelle State Recreation Site), to increase streamflows in the creek to benefit trout, salmon, and steelhead. TU supports recreational boating opportunity so long as it is consistent with the paramount conservation goal of stewarding Oregon's streams and fisheries.

TU agrees that this rulemaking is warranted, and we have previously participated in this process by providing both verbal comments (at the Marine Board's listening session on October 2, 2024) and written comments (via letter to the Board dated October 16, 2024). We also submitted a letter dated December 20, 2024 that provided comments on the *first* set of draft rules (Notice of Proposed Rulemaking filed October 29, 2024).¹

We have now reviewed the *second* set of draft rules (Notice of Proposed Rulemaking filed December 23, 2024)² and have updated our comments below.

The Oregon State Marine Board (OSMB) should proceed with rulemaking by adopting rules that limit jetboating activity to protect native fish and water quality, but we have a few specific constructive comments intended to improve resource protections and enforceability:

1. TU appreciates that OSMB has added a Low Flow Closure as recommended by ODFW, but the Board should revise the provision to address ambiguities and to allow non-motorized boating during the closure period.

TU agrees with the proposal to add a low flow closure in the rules, and we appreciate the Board for issuing a second set of draft administrative rules that includes the concept. In the October 2nd listening session, Oregon

¹ Draft Rules (version 1) available at:
<https://www.oregon.gov/osmb/info/Documents/Rulemaking/NoticeUpperRogueRiver.pdf> .

² Draft Rules (version 2) available at:
<https://www.oregon.gov/osmb/info/Documents/Rulemaking/NoticeUpperRogueRiverR2.pdf> .

Department of Fish & Wildlife (ODFW) recommended a low-flow closure to protect native fish when streamflows in the Upper Rogue drop to levels that leave native fish especially vulnerable to stressors.³ TU agrees that is warranted here.

However, the low flow closure in the draft rules is not clearly written and incorrectly applies to “all boating activities.” It also does not expressly state the reach of river where the closure would apply. In our comments on the first set of draft rules, TU recommended that OSMB insert following clause in the list of requirements *specific to charter boat operations*:

“[Charter boat operations] Shall not operate upstream of Fishers Ferry County Park on any day where the United States Geological Survey’s Dodge Bridge flow gage measured 1,500 cubic feet per second or less at 5am on such date.”

By specifying a specific flow, at a specific gage, at a specific time—and several hours in advance of tours being allowed to start on the reach—our intention was to provide certainty and time for planning in the event the low flow closure is triggered. We still prefer that approach.

OSMB’s proposed language is ambiguous and difficult to use. It states that, in the summer season when motors above 10 horsepower are allowed:

“... in the event that the river flow rate drops below *a three day average flow* of 1350 cubic feet per second, ("CFS"), or equivalent water level of 3.20 feet, as measured by the United State Geological Survey - USGS 14339000 Rogue River at Dodge Bridge, near Eagle Point, OR, *all boating activities* shall be restricted until the *three day average flow* increases above 1350 CFS.”

Draft OAR 250-020-0151(9)(c) (emphasis added for reference below).

This language raises, but does not address, the following important questions: (1) Is the 3-day average calculated on a running basis prior to the time a boater seeks to use the river, or does it apply to the 3 consecutive calendar days preceding a proposed boating day? (2) Where does the low-flow closure apply; above Fishers Ferry County Park, or some longer segment of the “Upper Rogue River” more generally? (3) How does one calculate or query on USGS’s website the 3-day average flow data from the Dodge Bridge Gage? (4) If flows below 1350 CFS present conservation concerns for certain boating activities, then why is OSMB using a 3-day average calculation (which would authorize boating on dates with flows under 1350 CFS so long as the average exceeds 1350 CFS)?

Our understanding is that ODFW’s concern regarded only motorized boating activities during low flow—not non-motorized craft such as kayaks and drift boats. TU is not aware of any evidence that non-motorized craft present concerns for native fish below the identified low-flow threshold.

For all of the reasons stated above, TU recommends the following language as a replacement for Draft OAR 250-020-0151(9)(c), to provide certainty about when and where the closure is in effect, and to apply the closure only to motorized craft:

“Between the above dates, no person shall use a motor in excess of 10 horsepower to propel a boat on the main stem of the Rogue River between Fishers Ferry County Park and Dodge Bridge County Park on any day where the river flow rate at 5am measured less than 1350 cubic

³ ODFW Presentation to Marine Board (recorded 10/2/24) at 58:40 mark (Biologist Dan Van Dyke commenting that minimum flow regulations could apply important resource protections “on years that we have severe drought and the reservoir isn’t releasing enough water to provide protection, for instance, during fill season.”) (available at: <https://www.youtube.com/watch?v=eP6z6QzGb0>) (hereinafter, ODFW Presentation).

feet per second ("CFS"), or equivalent water level of 3.20 feet, according to the United States Geological Survey gage - USGS 14339000 Rogue River at Dodge Bridge, near Eagle Point, OR."

Our language proposes using a specific time measurement rather than a 3-day average calculation to determine the closure. We recognize that this presents a (slight) risk of closures being triggered in the event of a short low flow period, but we believe the clarity and usability of this framing outweighs the ambiguity and difficulty in using a 3-day average formulation. This simple open/closed approach also avoids the possibility of motorized boating remaining open during low flow periods until the average drops below 1350 CFS.

2. The May 8th – September 10th season in proposed OAR 250-020-0151(9)(b) is two weeks longer than ODFW recommended, and TU recommends narrowing the period accordingly.

ODFW repeatedly recommended in the October 2nd listening session that seasonal use of motors exceeding 10 horsepower only be allowed from “mid-May through Labor Day.”⁴ The plain meaning of this is approximately May 15th – September 3rd, yet the Marine Board’s seasonal window is two weeks longer. According to ODFW’s presentation on October 2nd, the *early* part of the seasonal window is especially important because water releases from Lost Creek Dam typically “typically ramp up for fish needs around mid-May”⁵ with the result that fish may be especially vulnerable in the May 8th – May 15th period if the Board does not adopt a minimum flow closure.

TU recommends hewing to ODFW’s specific date recommendations regarding seasonal use of motors exceeding 10 horsepower (based on biologists’ professional judgment of when fish are vulnerable to motorboat activities), and narrow the seasonal window in this rule provision to dates that more closely match ODFW’s recommendations.

3. The “300 trips per year” cap in proposed OAR 250-020-0151(9)(c)(B)(ii) requires additional details to be workable (for OSMB administration, law enforcement, and user compliance).

TU agrees with the notion of capping the total number of charter trips during the seasonal period when motors exceeding 10 horsepower are allowed. However, this provision in the draft rules—which limits the number of charter trips in a certain reach to 300 annually—requires recordkeeping, and possibly formal apportionment between operators, yet doesn’t deal with those issues.

For this provision to be workable and effective, it should provide sufficient guidance to the Marine Board, law enforcement, and charter operators about *who* is keeping the official tally of trips taken, and potentially, *how* trips are divvied between operators.

TU recommends requiring charter trip operators to report the number of trips taken in the reach to the Marine Board weekly (ideally, in the list of charter requirements in the proposed rule revision). As written, the provision leaves charter operators to divvy the 300 trip quota amongst themselves—or potentially, run independently and without coordination until the 300 trip quota is hit and all charter trips immediately end for the season. In the event this trip quota becomes unworkable, our expectation is that the Marine Board would maintain a numeric cap on total trip numbers in the regulated reach and potentially re-open the rules to specify how trips are apportioned between multiple operators, rather than increasing the trip number cap.

⁴ See, e.g., ODFW Presentation at 58:35 mark.

⁵ ODFW Presentation at 1:00:40 mark.

4. TU questions the approach of leaving unregulated the number of trips and hours of use in the Fishers Ferry to Table Rock Road reach, and recommends requesting further input from ODFW on this issue prior to rule finalization.

The proposed rules cap the number of trips and regulate hours of use by charter boats *upstream* of Table Rock Road Bridge, but not downstream.⁶ In the October 23rd Board meeting, Board Member Messett commented that ODFW staff provided less specific details about fish habitat downstream of Table Rock Road than upstream, and that he perceived the area downstream of Table Rock Road as a sensitive area.⁷ OSMB staff responded that ODFW's input to that point had not addressed the number of trips that would provide resource protection, and elaborated that "whether [ODFW] had concerns or not, they didn't address it."⁸

TU respectfully requests that the Marine Board inquire with ODFW about whether the proposed rules provide sufficient resource protections *downstream* of Table Rock Road Bridge, and address this question in the next public meeting or Board discussion.

Thank you for pursuing this rulemaking and this opportunity to provide comments. Please let me know if you have any questions.

Sincerely,

James Fraser
Oregon Policy Director
Trout Unlimited
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Cc: Debbie Colbert, Director of Oregon Department of Fish & Wildlife
Chandra Ferrari, Natural Resources Advisor for Governor Kotek

⁶ See Map of Upper Rogue in Attachment 1.

⁷ Marine Board October 23rd meeting at 3:09:08-3:10:37.

⁸ *Id.*

Attachment 1

Map of Upper Rogue River

Source: Oregon Department of Fish & Wildlife, *Upper Rogue Fish Information*, Presentation to OSMB (10/2/24)

Note: Table Rock Road Bridge is located at Touvelle State Park. Gold Ray Dam was located between Fishers Ferry and Tolo as shown on this map. The dam was removed in 2010.

