

Agenda Item Summary

BACKGROUND

The fish passage statutes adopted in 2001 authorizes the Oregon Fish and Wildlife Commission (Commission) to waive the requirements to install fish passage at artificial obstructions. The Commission can grant a "waiver" if an alternative to fish passage is provided that results in a net benefit to native migratory fish.

Oregon Revised Statutes (ORS) 509.585(7a) authorizes the Commission to waive the fish passage requirements of ORS 509.585(1) and (b) in exchange for agreed-upon alternatives to fish passage that provide a net benefit to native migratory fish. ODOT requests a waiver from fish passage requirements for a culvert located under US Highway 101 where it crosses Tuttle Creek in the Chetco River Basin near Brookings, Oregon.

PUBLIC INVOLVEMENT

- This request was presented to the Fish Passage Task Force (Task Force) at their November 12, 2008 meeting in Salem. The Task Force is composed of nine members. Water users, fishing/conservation interests, and the public-at-large are each represented by three members. Task Force meetings are open to the public. The Task Force recommended the approval of this fish passage waiver request.
- A 30-day public comment period was initiated on February 13, 2009 through a news release which was distributed to statewide media, the Oregon Department of Fish and Wildlife (ODFW) electronic e-mail list which contains about 800 interested members of the public and local watershed councils. Comments received during the 30-day public comment period will be compiled and presented to the Commission at the March 20, 2009 meeting, at which the public will also be able to testify.

ISSUE 1

ODOT REQUEST FOR FISH PASSAGE WAIVER AT TUTTLE CREEK

ANALYSIS

A description of the fish passage waiver site (Tuttle Creek) and the mitigation site (Joe Hall Creek) are contained in the attached waiver application for Tuttle Creek. Both Tuttle and Joe Hall Creeks are in the Chetco River basin. An ODFW native migratory fish net benefit analysis is also included as attachment 3, as is the draft agreement between ODFW and ODOT regarding the fish passage waiver and subsequent mitigation (attachment 4).

The net benefit analysis contains information required by Fish Passage State Statutes (ORS 509.585 (7(b))) at the mitigation site. Staff concurs with the net benefit analysis which concludes that the mitigation at Joe Hall Creek will provide a net benefit to native migratory fish over providing passage at Tuttle Creek. Essentially, 1.72 miles of habitat for

coho will be lost (i.e., waived and will remain impassable) at Tuttle Creek in exchange for 2.22 miles of accessible, coho, fall chinook, winter steelhead, cutthroat trout, and Pacific lamprey habitat on Joe Hall Creek. Thus, a waiver from fish passage requirements is appropriate for Tuttle Creek.

OPTIONS

1. Approve ODOT request for fish passage waiver at Tuttle Creek and authorize the Department to enter into an agreement with ODOT to this effect.
2. Deny ODOT request for fish passage waiver at Tuttle Creek.

STAFF RECOMMENDATION

1. Staff recommends the Commission approve the ODOT fish passage waiver request by having the Chair enter an agreement with ODOT for a fish passage waiver for a culvert on Tuttle Creek in exchange for providing mitigation on Joe Hall Creek.

DRAFT MOTION

I move to grant the Oregon Department of Transportation a waiver from providing fish passage at Tuttle Creek in exchange for the proposed mitigation on Joe Hall Creek and authorize the Oregon Department of Fish and Wildlife to enter into an agreement with the Oregon Department of Transportation to this effect.

March 20, 2009

EFFECTIVE DATE