

Agenda Item Summary

BACKGROUND

Fish Passage Mitigation Banking Pilot Project

For the past three years and in close coordination with the Oregon Department of Transportation (ODOT) and the Oregon Fish Passage Task Force (Task Force), the Oregon Department of Fish and Wildlife (ODFW) have developed a Fish Passage Mitigation Pilot Project (Pilot Project). Fish passage mitigation banking is a new and innovative approach to addressing fish passage and has not been implemented in Oregon. ODFW is confident that the benefits of this Pilot Project for native migratory fish and the states highway infrastructure will be substantial. The Pilot Project proponents anticipate these new fish passage mitigation concepts and tools will generate considerable time and cost savings when compared to the traditional approach to fish passage waivers and mitigation.

The Pilot Project will develop, test, and validate a new Habitat Calculator tool that can be used to quantify and qualify fish habitat. We anticipate this new tool, when more fully developed, may be used to standardize the Department's methods to perform fish passage net benefit analyses for future passage waivers and exemptions. We also anticipate this tool may take on many applications, but primarily we plan to use this habitat calculator to assist Department staff, other governmental agencies, and the public at large to be more informed on net benefit analyses and future fish passage waiver decisions, which are contingent on mitigation as required in ORS 509.585(7).

The 2013 Statewide Fish Passage Priority List includes many high priority fish passage barrier sites that are yet to be modified to provide fish passage due to a lack of funding. Funding associated with future fish passage waiver sites and the Pilot Project approach could be directed to these high priority fish passage restoration projects. The fish passage banking approach may increase the likelihood to fund statewide high priority fish passage projects that are presently unfunded.

The banking approach identified by this Pilot Project is dependent on the development and refinement of two key tools:

- 1) a Net Benefit Analysis Tool that quantifies fish habitat credit and debits, and
- 2) a Mitigation Banking Instrument that guides ODFW in operating the program.

The Net Benefit Analysis Tool, an updated version of the Mitigation Banking Instrument, Overview Document, and updated versions of the Habitat Calculators can all be found at this link on ODFW's website:

<http://www.dfw.state.or.us/fish/passage/mitigation.asp>

The Fish Passage Banking Pilot Project will:

- a) conduct a limited number of mitigation banking transactions,
 - b) test and refine the Net Benefit Analysis tool, and
 - c) evaluate the potential for implementation of the fish passage banking program at a broader scope and scale.
- Conduct mitigation banking transactions – Over the course of the 3-year pilot project, ODFW and ODOT will develop a mitigation banking site by providing passage at a high priority passage barrier and will document the amount of habitat gained through the Net Benefits Analysis tool. There are a few sideboards that will be implemented as part of the banking transaction process. **These side boards include;** allowing ODOT to implement a maximum of 12 waiver projects of 0.5 miles or less of habitat length per site, use a minimum debit site value of 1, and use a 3:1 ratio for credits to debits.
 - Test the Net Benefit Analysis Tool – The Net Benefit Analysis Tool includes a Fish Passage Habitat Calculator that quantifies the habitat quantity and quality above an artificial obstruction. This tool will be used to make direct benefit analyses comparisons between potential fish passage waiver and mitigation banking sites. The calculator will be field tested to verify its accuracy, sensitivity, repeatability, and usability
 - Evaluate the potential for a broader scope and scale of the project – ODFW will apply the use of the Net Benefit Analysis tool as an experimental approach outside of the North Coast basin. We will apply the tool to sites with different climates, hydrology, geology, and riparian conditions so that a future broader scope and scale can be considered.

The **Mitigation Banking Instrument** (Instrument) defines how the fish passage mitigation banking pilot in the North Coast will be operated. It defines the roles and responsibilities of ODFW and ODOT including:

- ODOT as a permit applicant to ODFW requesting a fish passage waiver
- ODOT as a credit developer, generating mitigation credits providing fish passage at priority barriers; and
- ODFW staff operating the mitigation banking program

After the Agreement (Attachment 2) is signed, the instrument will provide guidance for the Pilot Project to generate mitigation credits and debits.

Additional reference materials located at ODFW's Fish Passage website and in the June 5, 2015 Commission Packet:

- Overview Document
- Mitigation Banking Instrument
- Net Benefit Analysis Technical Report
- Sample Credit Calculation for the banking site on the East Fork of the South Fork Trask River:
- Sample Credit Calculation for the debit site on Electric Creek Sample:
- Sample Credit Calculation for the debit site on Hwy 53 at MP 11.3:

As background to the proposed pilot project, Oregon law mandates fish passage at dams, diversion structures, culverts, or other human made artificial obstructions placed in waters of the state that prevents the migration of native migratory fish. This law requires the installation of fish passage or alternatives at the owner/operator's expense at all artificial obstructions in waters of the state where native migratory fish are currently or were historically present.

Activities that invoke or "trigger" state fish passage authority include:

- construction (major replacement or structural modifications) of an artificial obstruction
- abandonment of an artificial obstruction
- fundamental change in permit status at an artificial obstruction

These trigger events were identified as the appropriate time to address fish passage because it was assumed an owner or operator of the fish passage obstruction could anticipate and plan for the costs of fish passage into the costs of major structural upgrades, original or replacement construction, or a request for a significant permit change at the obstruction.

Prior to the trigger events described above, the owner/operator of the artificial obstruction is required to address fish passage.

Options to address fish passage include:

- 1) provide passage at the trigger site,
- 2) apply for an exemption, or
- 3) apply for a waiver and mitigate at an alternative location.

To qualify for a waiver to the requirement to install fish passage, mitigation shall result in a benefit to native migratory fish greater than that provided by the artificial obstruction with fish passage (ORS 509.585 (7)).

OAR 635-412-0005(29) defines "in proximity" as meaning within the

same watershed or water basin, as defined in the Oregon Water Resources Department (OWRD), and having the highest likelihood of benefiting the native migratory fish populations affected by the artificial obstruction. Within the OWRD Drainage basin, the North Coast service area includes all coastal basins from Neskowin upstream to the lower Columbia River. All project sites under consideration for implementation as part of the pilot project will be within this service area.

OAR 635-412-0040 (9) (c) states that mitigation shall at least benefit the same native migratory fish species affected at the artificial obstruction. The Net Benefit Analysis Tool (see June 5, 2015, Commission Exhibit E) documents the total amount of habitat debited and credited, and is accounted for with a final score via the habitat calculator.

PUBLIC INVOLVEMENT

The public was provided opportunities to participate and provide public comments during eight Fish Passage Task Force Meetings over the last three years. Meeting dates and location are listed below:

- August 10, 2012 (Roseburg)
- February 1, 2013 (Salem)
- November 15, 2013 (The Dalles)
- February 21, 2014 (Salem)
- June 13, 2014 (Tillamook)
- Oct 17, 2014 (Salem)
- February 27, 2015 (Salem)
- July 24, 2015 (Bend)

ODFW and ODOT co-presented the fish passage banking concepts as an informational agenda item during these Fish Passage Task Force meetings. On April 7, 2015 ODFW issued a 3-week news release to solicit public comment on the Pilot Project proposal. The public comment solicitation described the Pilot Project and included a link to the draft documents on the ODFW web site. This solicitation was distributed to all the members of the Task Force, media venues, representatives for different conservation groups, and a list of individuals and organizations that have expressed interest in fish passage issues. The Confederated Tribes of the Grande Ronde Community of Oregon submitted comments for the Pilot Project and ODFW staff responded to those comments (see June 5, 2015, Commission Exhibit E, Public Correspondence).

May 5, 2015 the Task Force met in special meeting to consider the Pilot Project. This meeting was open to the public. After much discussion, collaboration, and substantive input among Task Force Members, ODOT and ODFW staff, the Pilot Project was unanimously supported by a 7-0 vote (see June 5, 2015 Commission Exhibit E, Attachment 7). Through this endorsement, the Task Force recommends the Commission support moving forward with the 3-year Fish Passage Mitigation Banking Pilot Project.

On June 5, 2015 ODFW staff provided an information presentation to the

ODFW commission that included a broad overview of the pilot project.

Public review and comment on the Commission item will be accepted prior to and during, the August 7, 2015 Commission meeting, when the Pilot Project will be presented to the Commission for approval of the Agreement.

ISSUE 1

APPROVAL OF THE FISH PASSAGE MITIGATION BANKING PILOT PROJECT

ANALYSIS

The data analysis process for the Net Benefit Analysis tool is a key component of the review and success determination of the Pilot Project. The team has already run Net Benefit Analysis for the proposed banking site and for two of the debit sites (see June 5, 2015 Commission Exhibit E). As the team continues to run calculations for additional debit sites, we will continue to learn more about the tool and its effectiveness.

The team is developing tools to test the accuracy of the tool. Local ODFW biologists will conduct their own assessment to compare with the Net Benefit Analysis tool scores. The side by side review from qualified fisheries biologist will be a key component to supporting the tool. A unique aspect of the Net Benefit Analysis tool is the incorporation of floodplain and landscape based analysis connected to the instream data. This gives a broader perspective on fish habitat above and beyond current localized conditions.

One variable that will be integral to a successful project is verification of the ratio of debits to credits. A 3:1 ratio will be used for the Pilot Project, meaning that for every one debit created from a waiver site, three credits will be withdrawn from the banking site. This ratio is expected to fit the project well and result in an obvious benefit to fish.

Each waiver project will be reviewed individually as they are developed and outlined under OAR 635-412-0025. There are no changes proposed to the current waiver review process. The Net Benefit Analysis tool will allow ODFW to determine the habitat value at each waiver site which will then be debited from the habitat value from the proposed banking site.

High regional priority project(s) will be selected to implement the mitigation banking site. The proposed banking site for the Pilot Project will provide significant benefits to the full suite of salmonids and other native migratory fish on the North Coast. The typical ODOT waiver site will be at culverts in steep headwater streams with little habitat (less than ½ mile) above the obstruction. The typical species impacted by not providing passage at these locations are cutthroat trout and in some locations steelhead. The mitigation site is expected to benefit more species than those typically impacted at the waiver sites, resulting in an overall benefit to Native Migratory Fish greater at the bank site than providing passage at the waiver sites. In addition, the mitigation site benefits more sensitive and endangered species than those impacted by the typical waiver site.

Pilot Project transactions will be reviewed and quantified by species for each project. At the conclusion of the Pilot Project all unused debits and credits that remain at the waiver and banking site(s) will expire and unavailable for future use. The fish passage waivers issued for each of the sites will remain valid so long as the banking site continues to function and provides fish passage or the waiver sites undergoes another trigger event. Although there may not be an exact match for debits and credits between all species, restoring fish passage at a region wide priority barrier along with the Pilot Project eligibility criteria ensures a net benefit to Native Migratory Fish.

OPTIONS

1. Adopt the Fish Passage Mitigation Banking Pilot Project.
2. Modify the Fish Passage Mitigation Banking Pilot Project.
3. Deny the Fish Passage Mitigation Banking Pilot Project

**STAFF
RECOMMENDATION**

Option 1. Staff recommends Commission approval of the Fish Passage Mitigation Banking Pilot Project

DRAFT MOTION	I move to approve the Fish Passage Mitigation Banking Pilot Project as proposed by staff, and authorize the Chair of the Commission to sign the Agreement in Attachment 2 on the Commission's behalf.
EFFECTIVE DATE	Aug 7, 2015