

**Testimony of:**

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**Presented to:**

Oregon Fish and Wildlife Commission  
4034 Fairview Industrial Drive SE  
Salem, OR 97302

**Date:** August 7, 2015

**Regarding:**

FISH PASSAGE MITIGATION BANKING PILOT PROJECT

I present this testimony on behalf of the ODFW Fish Passage Task Force for which I have been an active member for eight years. Prior to being a member I often attended task force meetings as an interested stakeholder. I am intimately familiar with the full legislative history of the fish passage statute. I have followed the development and application of the current fish passage rules and regulations since the late 90's, and I worked with water users in providing comments and proposed text as the rule was being crafted.

It is quite customary for rules and regulations to be modified after they have been applied for several years, since there is no such thing as legal perfection, especially over time. The Task Force understands the issues and complexities involved in administering the fish passage rules and regulations. We have reviewed numerous projects where members have expressed concerns in either the limitation of or the excess of the rules. What we have all agreed on is the need for flexibility in applying the rules given the extent of obstructions throughout the State, the timeliness of fish recovery, limited funds, inexact science, and often conflicting priorities. The proposed Mitigation Banking Pilot Project conforms to the guidance that the Task Force has given the Department over many years.

The Task Force recommends that the Commission approve the Fish Passage Mitigation Pilot Project. We have tracked the entire development of the Pilot Project and have provided extensive comments and recommendations along the way. We find that the Project is based on sound scientific principles and that it affords administrative certainty. We requested that the Project also demonstrate replicability among users and our request has been incorporated into the Project. We are not without some reservations or concerns, and that is why it's a pilot project and not something proposed to be rolled out throughout the State. It needs to be proven and refined before such a proposal is made. It's not perfect, but it is indeed a step in the right direction of addressing fish recovery priorities and limited funds, and the net benefit tool associated with it is the best tool that the State has had to date. Such a tool will address any public concerns that ODFW may be "arbitrary and/or capricious" in the manner that net benefit assessments are conducted. Such a tool will also be helpful in establishing the next priority listing of obstructions, as required by law.

Public comment has suggested that *"mitigation banking, in general, has not worked well. That the programs tend to look good on paper but to not work well in reality."* Wetlands are cited as an example and it is stated that *"there is a general sense that wetlands "mitigation" banking has failed to prevent*

*an actual net loss of wetlands.*" While I can't argue that we likely have had a net loss in wetland acres over time, I can most readily assure the Commission that I know of no one within the wetland science community, particularly in Oregon, who would support such a claim. Mitigation banking has contributed to no net loss in wetland function. In fact, if the science did not support that wetland mitigation banking has a greater impact on protecting and restoring overall wetland function throughout the State, State and federal agencies would not have changed their policies from wetland mitigation banking as a last resort to wetland mitigation as the first form of mitigation to be considered in a permit application. The Pilot Project considers a suite of physical and biological factors to assess benefits and losses (i.e., debits and credits). It does not simply address stream miles as the measure of fish productivity, but instead considers the overall health of those miles of habitat. Just as scientists have stopped looking at each acre of wetland as being created equal and instead look at the function of that acre, so too does the Pilot Project offer a way for the State to consider what each stream mile means in the equation of recovering fish. Fish protection and fish recovery is the aim of the Fish Passage rules, and the Task Force believes that the Pilot Project merits approval since it is directed towards those goals.

Thank you for your time,

A handwritten signature in cursive script, appearing to read "Alawn Johnson".