



*OREGON DEPARTMENT OF FISH AND WILDLIFE*  
**Fish Passage Task Force**

**MEETING MINUTES**

**June 4, 2021**

Oregon Department of Fish and Wildlife  
Salem, Oregon

**Attending:**

The following attended all, or part of, the meeting via phone or Teams:

**FPTF**

**Representing**

Ken Bierly	Public-at-Large
Bill Cunningham	Public-at-Large
Denise Hoffert	Fishing and Conservation
Mark Kujala	Water Users
Kelly Moore	Fishing and Conservation (absent)
April Snell	Water Users
Steve Albertelli	Water Users
Terry Turner	Fishing and Conservation
Zak Toledo	Public-at-Large (Chair)

**ODFW**

**Title**

Greg Apke	Statewide Fish Passage Coordinator, Salem
Pete Baki	ODFW-ODOT Fish Passage Liaison, Salem
Katherine Nordholm	Fish Screens and Passage Coordinator, Salem
Alan Ritchey	Fish Screens and Passage Program Manager
Frank Drake	ODFW Rogue Assistant District Biologist

**ODOT**

**Title**

Allen Gillette	ODOT Biologist
Cash Chesselet	ODOT-NMFS Liaison
Cyrus Bullock	ODOT Environmental Specialist
Tom Loynes	ODOT-NMFS Liaison

**ODF**

**Title**

Eric Hartsein	ODF Interim Deputy Division Chief
Scott Swearingen	ODF Field Support Unit Manager for Private Forests
Thomas Whittington	ODF Water Quality Specialist

**Public**

**Organization**

Kevin Van Cleave	
Mike Tripp	
Mark Rogers	



OREGON DEPARTMENT OF FISH AND WILDLIFE

**Fish Passage Task Force**

**MEETING AGENDA**

Oregon Department of Fish & Wildlife

Virtual (Teams) Meeting

Salem, Oregon

**Friday – June 4, 2021 @ 0900 to 1300 hrs**

~ 9:00am ----- Call to Order -----

~ 9:05 a Review & Approve Agenda and Feb 26, 2021 Meeting Minutes (*Chair Toledo*)

~ 9:10 b Task Force Updates – April Snell (appointment) Mark Kujala (departure) (*Apke*)

~ 9:20 a Task Force Member Updates

~ 9:50 b ODFW Passage Program Staffing Changes

~10:00 b Public Comment Period

\*Public Testimony: 48-hour Advance Registration Required

~10:30 c ODOT Hwy 58 Batched Waiver Request (*Nordholm*)

\*Public Testimony: 48-hour Advance Registration Required

~10:55 c OR Department of Forestry Anlauf Creek Waiver Request (*Nordholm*)

\*Public Testimony: 48-hour Advance Registration Required

~11:20 --- Break --- (10 minutes)

~11:30 c Task Force Legislative Report – Draft

b Legislative Session Update – (*Apke*)

b SB 2298- Environmental Weirs

~11:50 b Oregon Administrative Rule Revision Initiative Updates (*Apke*)

~12:45 b Other Business, Issues, Initiatives (*all*)

~12:55 a Meeting Recap, Actions Items and Next Meeting Agenda Build (*staff*)

~1:00pm \*\*\*\* Meeting Adjourn \*\*\*\*

Agenda Item Types:

a – Business

b – Information

c – Recommendation

d – Work Session

### **1. Call to Order & Welcome and Introductions**

Toledo called the meeting to order at 9:01am. Apke called roll. Toledo talked about the raising of the hand feature to say you have something to say. Apke mentioned that the public comment period would be at 10 am. He mentioned that no one signed up in advance and is not anticipating public comments on the two action items on the agenda.

### **2. Review and Approve Agenda and February 26, 2021 Meeting Minutes**

Toledo asked for a motion to approve the meeting minutes from February 26, 2021 meeting. Turner moved to approve the minutes and Cunningham seconded the motion. Toledo took a vote to approve the motion. No one objected and the February 26, 2021 meeting minutes were approved.

### **3. Task Force Updates – April Snell (appointment) and Mark Kujala (departure) (Apke)**

Apke welcomed April Snell to the Fish Passage Task Force. While this is her first meeting, she has been involved in the OAR update. Snell is the Executive Director of the Oregon Water Resource Congress and represents the water user community. She has a master's degree from the University of Oregon. Apke thanked her for volunteering. Snell thanked Apke for the introduction and said that water is her primary focus but also works with other groups on mutual interests. She looks forward to meeting everyone in person. She looks forward to working with the FPTF going forward.

Apke mentioned that Kujala is having his last meeting and that he has brought a unique perspective to the task force. He is now a Clatsop County Commissioner. Apke said he would be missed. Kujala welcomed Snell and wished her luck with the group. Kujala enjoyed his time on the task force. Family needs with kids kept him from doing a second term. He is working with City of Astoria and work on the airport. Toledo said that he appreciated Kujala representation of the coastal community and that he brought comments on what fish mean to the public. Toledo said that Kujala representation that showed that fish mean different things to different people. Toledo thanked Apke for bringing these different perspectives to the task force.

### **4. Task Force Member Updates**

Kujala is anxious to work with CREST and get up to speed with the work they do. He will be working on levee systems with the Cities of Warrenton and Astoria. Apke reminded Kujala of the tide gate funding resources through Business Oregon. Kujala has started a grant proposal with them.

Hoffert talked about fish passage and dam removal projects for this summer. She is working with Turner on a Clackamas project. It is a small project but very visible. She is working on six projects (5 dam removals and one bypass project) in the Rogue basin, including Harboldt Dam. They are all projects that will address juvenile passage. They are all privately owned structures. She thanked local partners for working with the landowners.

Cunningham talked about the lack of stream flow and dry warm conditions in eastern Oregon. Most reservoirs are below 50%. Some irrigation districts are looking at water right rationing. He mentioned the Klamath Basin drought issues with fish passage. He discussed keeping water in the lake will impact fish in the Klamath River. He said that it looks like September flows. He worries about fish's ability to survive in small drainages given the drought conditions. He mentioned HB 2610 has stalled in committee.

Turner mentioned Hoffert being a huge help on dam removals. He mentioned there are over 3,500 volunteers with trout unlimited. The local Portland project is being completed with local Clackamas volunteers and he thanked Dave Stewart with ODFW. The Salmon Superhighway is completing projects this summer. They have over 80 miles opened up. Turner is pushing for more private funding. Turner mentioned that donations and growth of membership in increasing funds. He attributed some of that to COVID and people getting out of doors and fishing more. He is working on a temperature study in the fire areas of the Clackamas.

Bierly talked about working with ODFW on a fish solution on Glenn Creek in West Salem. He discussed some recent research on Carp on Malheur Lake. Harvesting carp will not be sufficient for a clear water lake. They are researching where carp hang on for targeted harvesting.

Albertelli provided permitting support for the Harboldt Dam removal. He is working on some aquatic organism passage culverts on the High Cascades Ranger District of the Rogue River-Siskiyou National Forest pursuant to mitigation requirements of the Prospect No. 3 hydro project. Apke asked about fire damage to infrastructure. Albertelli said fires were upstream and downstream of their hydro facilities, including fish passage facilities, so they were not damaged. 20 miles each of two different power lines were damaged. One has been completely restored, and the other is still being restored. They are doing some helicopter work on downed trees. They are stacking it for USFS and BLM and where possible providing fish habitat logs. Local ODFW is working on using these logs for future projects.

Snell mentioned last year's wildfires and mentioned how catastrophic they were. They are concerned about sediment from the fires affecting water supplies. Snell is worried about blue-green algae in response to low water and poor water quality conditions. The Water Resources Congress is working with other states to get funding for wildfire prevention and cleanup. Snell mentioned that the water supply situation is very dire. It is the worst year ever for the Klamath Basin. The only place not in severe drought is in the Willowa's. She mentioned some areas with too much water resulting in some flooding and some irrigation district infrastructure including fish screens on the Umatilla. Snell mentioned that Jim Pendleton with the Talent Irrigation District unexpectedly passed away. Snell mentioned she is involved in the State Legislative Session. Snell is supporting efforts to improve irrigation district infrastructure such as piping open canals and fish passage and screening passage. They may use hydro projects to help fund this through in-conduit hydro, and other renewable resource projects.

Apke mentioned that funds are becoming available through multiple sources. He hoped the 2019 ODFW Statewide Fish Passage Priority List would help identify and drive projects. The priority list revision process will start again in 2022-23. Toledo mentioned that Gillette (ODOT) has a great video on lamprey passage.

## **5. ODFW Passage Program Staffing Changes**

Apke discussed Kregg Smith (ODFW Fish Passage Program) has moved to the Hydropower Coordinator with ODFW. This position deals with FERC issues including fish passage. Nordholm has moved to a job rotation into the Fish Screening and Passage Coordinator. She is covering fish

screening and some of Smith's responsibilities. Apke mentioned the reduction in program staff and said ODFW is dealing with the workload issues as best they can. The Fish Passage Rule Revision Initiative process is taking most of Apke's time. Apke mentioned Shaun Clements was promoted to Assistant Deputy Fish Chief. Ed Bowles has retired, and the recruitment concluded and mentioned that Mike Harrington will be the new ODFW Fish Division Administrator effective July 7, 2021.

Nordholm is recruiting for three members for the Fish Screening Task Force (FSTF). Nordholm asked FPTF members to reach out to possible members for the FSTF.

ODFW has an online annual volunteer training expectation and policy review for code of conduct and sexual harassment. Apke previously distributed an email with an electronic link to the required volunteer training and he asked the task force please complete the policy review and training.

## **6. Public Comment Period**

Toledo asked for public comments. No one provided public comments. Toledo closed the public comment period at 10:03.

## **7. ODOT Hwy 58 Batched Waiver Request (Nordholm)**

Toledo introduced this topic. Apke provided an overview of the role of the FPTF as it relates to fish passage waiver and exemption requests and noted their focus role is to critically review the ODFW benefit analyses and make a recommendation on the waiver or exemption request to the Department or the Oregon Fish and Wildlife Commission as appropriate. He outlined and described that there needs to be a net benefit associated with waiver requests from the mitigation strategy compared to the trigger site with fish passage. Snell appreciated the overview.

Nordholm provided videos covering the projects prior to the meeting. Nordholm presented a PowerPoint presentation on public comments received. They received one public comment from WaterWatch. They said the net benefit analysis was reasonable and would provide a net benefit as long as the mitigation culvert did not need to be replaced currently. Nordholm said the culvert was in good condition, WaterWatch also asked ODFW to review if current exemptions existed for barriers upstream. Nordholm said there were no exemptions upstream. Nordholm presented ODFW recommendations. Toledo said he appreciated the WaterWatch comments. Toledo also mentioned that providing the information ahead of the meeting was efficient and useful.

Bierly asked if staff routinely check for exemptions. Nordholm mentioned that this was a good comment and ODFW will ensure upstream exemptions, if present, will be discussed for future passage waiver requests. Nordholm also mentioned the exemptions are reviewed every 7 years.

Motion: Bierly recommended that the FPTF recommend to the Department approve the waiver request. Turner seconded the motion.

The motion passed with no objections.

## **8. OR Department of Forestry Anlauf Creek Waiver Request (Nordholm)**

Nordholm presented a PowerPoint on the public comments. ODFW received two public comments, both opposed to granting the waiver. Both comments did not feel the net benefit was achieved and some confusion about why the Oregon Department of Forestry (ODF) was involved. She described that ODF has their own fish passage approval process under the Forest Practices Act. WaterWatch again asked if an exemption was upstream. WaterWatch asked about the timing of the waiver and mitigation action in relation to the timing of the trigger event. WaterWatch also stated that the mitigation work would likely happen without ODF contribution. Nordholm talked about additional need from the Archie Creek fire impacts. WaterWatch felt that the NBA did not provide sufficient evidence to support an affirmative determination of a net benefit to NMF, especially without surveys to establish habitat condition. ODOT and the Watershed Council had done surveys previously. WaterWatch asked about the metrics used in the NBA. WaterWatch stated that ODFW does not have authority to grant a waiver based on data gathered in the future. Nordholm stated the waiver would have pre and post monitoring requirements.

Nordholm discussed the challenges of the NBA including that there were not easily quantifiable metrics.

Bierly asked about the MOA with ODF and asked if this is a failure of that agreement or will this be addressed in the future. Nordholm talked about the electrofishing survey that was done under the ODF action. Nordholm mentioned that ODOT was working with ODFW. ODOT found Coho in their salvage. Ritchey described this as an ODF stream passage clarification error. The survey only found non-NMF fish. Ritchey described that the new MOA should be an improvement.

Whittington (ODF) stated that the Nordholm and Ritchey comments were correct.

Cunningham asked about the two surveys. Nordholm said that the Coos Watershed completed a survey in 2017. ODFW walked the creek on an ODOT survey around the same time.

Baki was asked about ODOT's perspective on the culvert not passing fish. Baki described ODOT's frustration with their investment. Baki also mentioned that ODOT is still investing in Anlauf Creek on a Culvert Repair Programmatic Agreement (CRPA) project under I-5.

Hoffert expressed concerns that the proposed mitigation was a minimal amount given the context of the project. Baki mentioned that ODOT also has a CRPA project directly downstream and will have to pay ODFW \$50,000 for that project.

Toledo asked about temporal loss. Nordholm mentioned the complexities around finding viable mitigation sites for fish passage waivers in lieu of providing passage and this process often takes

Nordholm said that ODFW has discussed the issue of temporal loss but she doesn't believe they have ever required extra mitigation in these instances. Apke mentioned that he believes this project is an anomaly. Most waiver projects implement mitigation in conjunction with the project. Apke said this temporal loss is rare for projects seeking a waiver and does not know of any historic projects where the NBA addresses temporal loss. Apke mentioned the new ODFW-ODF MOA

addresses disparity of fish distribution. Apke mentioned that the new Draft MOA does provide ODFW an administrative role in the future as it relates to passage waivers and exemption requests and approvals. Ritchey mentioned that several other mitigation projects were assessed and dismissed.

Albertelli mentioned that there are two separate multi-million dollar mitigation funds that are for work on federal lands in the North Umpqua watershed. There is money from other sources. Toledo mentioned he is struggling with one state agency (ODOT) is investing in a system and then another (ODF), due to a series of unfortunate events is not providing passage above that investment. Toledo asked if there are no barriers in the system that ODF can replace as a passage-to-passage mitigation. Ritchey mentioned that ODF was able to propose and implement this project but that there are many in proximity barriers. Apke mentioned that the project proponent becomes responsible to maintain the mitigation.

Turner asked if the work on Harrington Creek would be done anyway as a result of the fire restoration. Ritchey does not know when the restoration would have occurred. Turner asked who the lead agency would be on the restoration. Nordholm mentioned that BLM owns the land. Whittington mentioned that are working with PURS on the work. Toledo asked for a motion.

Motion: Cunningham made a motion that the task force recommend approval of the ODF waiver request to the Department with an amendment to add that if there is a failure to demonstrate a net benefit from the required monitoring would require additional mitigation. Snell seconded the motion.

Toledo opens the motion for debate.

Discussion: Hoffert asked what happens if the FPTF does not recommend the approval. Cunningham mentioned that the FPTF has struggled with waiver requests with a different kind of mitigation beyond the mile for mile habitat exchange. He feels that these types of projects often lead to lingering doubts about if the net benefit is achieved. Cunningham feels they are valid approaches, and that this is a valid project that will give a net benefit at this site. Ritchey stated the FPTF could recommend for or against (or no recommendation). The Department will take the recommendation to leadership if the FPTF recommends against the project or provides no recommendation. Apke mentioned that it would cause a delay to find new mitigation. Toledo stated that the project would occur with or without ODF funding. Ritchey stated he did not know if the other funds were available or when they might be available. Snell provided comments regarding Bowman Dam and that she recognizes ODFW has limits on their authority. Snell would rather see some benefit rather than no benefit. Bierly stated that this is an after-the-fact situation that will likely reoccur in the future. Bierly asked what efforts would be required to reduce these kinds of incidents in the future. Apke stated this was a great question and that waivers are often complicated. Bierly asked if increased budget could help with barrier inventory and/or fish distribution. Apke said this would be helpful but we often do not have the historical knowledge. Bierly asked if OAR's could address this. Toledo mentioned that WaterWatch often makes comments about if ODFW holds ODOT accountable different another applicate. Toledo asked if ODFW would allow ODOT this opportunity and if ODOT is being held to a higher bar. Apke said we would allow that and the questions is around if that action is already permitted or planned as outlined in rules. Apke mentioned the Henry Hagg Lake project and some of the complexities there. If it is already a

planned action or a permitted action, then no. Nordholm mentioned that ODOT always has the option of bringing a project like this in front of the task force. However, as a liaison working with ODOT to find mitigation she looks for something that will more clearly demonstrate a net benefit and she would have recommended ODOT looking for something else. Bierly stated there is a monitoring to document the proposed net benefit. He suggested proposing if the mitigation does not provide a net benefit that additional mitigation would be required. Apke said that this should be within our requirements. If it is not achieving the conditions of the approval, ODFW can revoke the waiver. Ritchey stated the task force could recommend conditions. Ritchey mentioned that there are three entities involved (landowner, Seneca and ODF). Turner asked how ODF got to the \$30,000 figure and that it seems like a small amount. Whittington said they worked with PURS and BLM and that the whole project is 0.6 miles. Whittington stated that the whole project is \$60,000 and that half of that would be appropriate. Toledo asked if there was additional debate on the proposed motion. Bierly asked if an amendment could be added to the motion that would require additional mitigation if monitoring doesn't demonstrate a net benefit.

Nordholm clarified the timing of current monitoring requirements and that the additional monitoring would be if pool habitat was not increased after 5 years that additional mitigation will be required. Bierly confirms that that was the intention. Snell continues to second the motion with the amendment. Toledo asked if there was additional debate. Turner stated this has been a great discussion given it is an odd mitigation request.

Toledo asked for votes on Cunningham's motion:

All members voting in support of the motion.

Toledo asked for the vote. Calls the roll and all eight members voted yes.

## **9. Task Force Legislative Report; Legislative Session Update; HB 2298- Environmental Weirs**

Apke discussed the 2021 Report to the Legislature. Apke thanked Hoffert for comments on this document. It is a high-level two-page primer to inform the Legislature. Apke asked for additional input. This document needs to be out before the end of June so ODFW needs FPTF comments by the end of next week (6/11/2021). Apke will send out her comments to the rest of the FPTF.

Apke mentioned HB2610 did not get out of committee and it is not moving forward but there will be a subcommittee. ODFW hopes to be a part of this subcommittee.

Apke discussed HB2298 has passed and was signed by the Governor. There will be administrative rule requirements in the bill for ODFW. ODFW will need to adopt rules within 1 year of adoption of the rules specific to Section 2 of the bill. This will be tied into the ongoing OAR revision initiative process. Bierly asked if it only applies to closed basins on the East side. Apke stated that was correct. The rule making will be narrow given that. Ritchey stated there are many sideboards in the bill. It will affect ODF, OWRD and DSL also and ODFW will reach out to them. Bierly asked about the mention of ODOT and not the mention of counties particularly county road departments.

## **10. Oregon Administrative Rule (OAR) Revision Initiative Updates:**

Apke stated that the OAR review process has become bigger than originally expected and will take more time. ODFW requested public comments for two months and received approximately 260 comments and across myriad stakeholders. ODFW is working along with the rules sub-committee on an efficient way to get through all of the comments. Comments have been categorized into specific groups according to what section in existing OAR the proposed rule concept might apply. Of the 260 comments, the bulk of the comments intersect the definitions section, prioritization section, waivers and exemptions, and fish passage design criteria sections. The sub-committee group has discussed developing a new section that identifies the policy intent of the revised OAR's. Apke identified the workload associated with this initiative is onerous. The OAR sub-committee presently meets every two weeks on Tuesdays from 2-4pm. Apke thanked FPTF members that are assisting in developing tools for coordinating and processing the public comments. There has been significant public participation in the meetings. The proposed rules changes will likely go to the Oregon Fish and Wildlife Commission sometime in early 2022. The OAR review sub-committee continues to get more organized and efficient. Apke intends to provide recommendations to the task force for a future recommendation to the Commission. The Task Force recommendation will help inform the Commission. The Department will make a recommendation to the Commission. The Commission can approve, deny or make changes to the proposed rule changes.

Apke asked for statements from FPTF members on the rules sub-committee.

Hoffert was thankful for the FPTF members that are working on the rule changes.

Cunningham thanked Apke for his efforts to synthesize the comments into a manageable form. He mentioned that there would be additional public comment opportunities.

Turner is pleased to see the number of public comments involved in the rule revision initiative process. Turner thanked Bierly and Albertelli on their efforts to assist and organize the public comments.

Bierly sent out a document that compiled the comments of the definitions. Bierly is having issues sending email to Albertelli. It is difficult to organize the comments into the appropriate rule. Albertelli is receiving the emails.

Toledo thanked Albertelli for his efforts on improving the OAR review process.

Albertelli stated that the OAR review team is working through the comments. Everyone is trying their best to adhere to the Statutes. Albertelli suggests adhering to the public comment period more strictly. Apke stated that ODFW will more effectively manage public comments during future virtual meetings and will more strictly adhere to the recognized public comment periods.

Snell stated that this is a monumental task to incorporate comments. Snell stated that there is a lot of nervousness from project proponents, when there are changes to Fish Passage Rules around mitigation. There are many water users and many different perspectives in that group. Snell will continue to reach out to water users. Snell stated that it is a time commitment but also very

important. Snell stated that there is a lot of effort in the rule changes and that should be understood on future rule changes.

Toledo suggested that future rule changes initiative might consider section specific changes instead of the whole rules. Toledo likes the process so far. Toledo appreciates the efforts to include public comments. Toledo stated that we should have some document that shows that we heard the comments provided.

Apke stated that Nordholm has looked for tools to more efficiently manage public comments. Nordholm searched for information on organizing comments online. Nordholm found Zotero, an indexing software. Nordholm shared her screen to demonstrate the software. The software allows tags on the comments to organize them and has the ability to add notes. It allows multiple users to sign into the account. Apke has concerns about implicit bias possibilities on who imports the comments. Apke asked if the task force sees value in this software. Albertelli thinks this is late in the game and some of these tasks have already been completed. Albertelli asked if ODFW would respond to each public comment. Apke agreed that the question if this tool will be helpful is important. Apke does not believe it is ODFW's goal and objective to respond to each comment. Ritchey stated it is not a priority today but sometime later we would have a unified response available. Albertelli said that if this tool provides help in responding to public comments it would be useful, otherwise, the work is already or nearly completed. Bierly stated this may have been helpful early on in the process but probably is not now.

## **11. Other Business, Issues, Initiatives**

Toledo made a motion for an optional fish passage task force field visit this year. Toledo proposed the site visits be paid for without Program funds. Ritchey is not supportive of an optional task force funded field trip. Ritchey has concerns with state COVID guidelines (DAS) or the FPTF members using their own funds. It is not known when travel and COVID restrictions will change. Ritchey stated there are still travel restrictions but that could change. Snell is supportive of a field trip and is sensitive to the agency restrictions. Snell stated that these policies will be changing and suggested on tentatively plan on a trip given how busy schedules are. Turner agreed with putting a date on the calendar and being flexible. Hoffert also agreed with getting a date on the calendar and stated there is nothing preventing them as private citizens if there want to agree to get together outside of ODFW. Albertelli suggested a fish passage tour of facilities in late October on the North Umpqua. There is also lodging on site. Apke will discuss this option with Ritchey. Ritchey asked Albertelli if there is a meeting facility and Albertelli replied that yes there is. The facility is immediately adjacent to their lodging. There are campground facilities also.

## **12. Meeting Recap, Actions Items and Next Meeting Agenda Build**

Apke mentioned the next meeting on October 15. Potential topics include beaver issues and structures. Apke asked the task force members to work with their stakeholders to identify topics to discuss at the next meeting. Baki anticipates two ODOT fish passage waiver requests at the next meeting (Indian Creek and OR34 MP 28.8). Toledo asked if Jacob Shockey could do a presentation on his beaver work. Apke thought that was likely. Toledo asked for updates on the ODFW MOU and waiver updates. Cunningham asked to add educational items to future task force meetings given

Snell is a new member of the FPTF. Apke agreed this would be useful. Cunningham mentioned lamprey and fish passage retrofits like lamprey ramps and how helpful it was to see it. Apke brought up the ODFW produced Beaver State Podcast and how well it conveys information to the public.

**13. Meeting Action Items:**

Send Legislative Report with Hoffert comments to FPTF

Apke will work with Ritchey to work on potential FPTF site visits.

Create a visual heavy presentation of typical fish passage issues and terminology.

**13. Adjourn**

Toledo adjourned the Task Force Meeting at 1:02pm and stated the next meeting is October 15.