



OREGON DEPARTMENT OF FISH AND WILDLIFE
Fish Passage Task Force

MEETING MINUTES

October 15, 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
Fred Messerle	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
Josh Hanson	ODFW-ODOT Fish Passage Liaison, Salem
John Spangler	ODFW Mid Coast Watershed District Fish Biologist
Dave Banks	ODFW Malheur Watershed District Fish Biologist
Ben Walczak	ODFW North Willamette District Fish Biologist

ODOT

Title

Allen Gillette	ODOT Biologist
Devin Simmons	ODOT Biologist
Daniel Orhn	ODOT

ODF

Title

Thomas Whittington	ODF Water Quality Specialist
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DSL

Title

Andrea Celentano

Public

Organization

Brian Posewitz	Water Watch
Mike Tripp	Public

Others in Attendance

Carrie Butler, Jacob Jefferson, Ted Ressler



OREGON DEPARTMENT OF FISH AND WILDLIFE

Fish Passage Task Force

Oct. 15, 2021 Virtual (Teams) Meeting

DRAFT Meeting Agenda

[Click here to join the meeting](#)

Salem, Oregon

Friday – Oct 15, 2021 @ 0900 to 1400 hrs

- ~ 9:00am ----- Call to Order -----
- ~ 9:05 ^a Review & Approve Agenda and June 4, 2021 Meeting Minutes (*Chair Toledo*)
- ~ 9:10 ^a Fred Messerle Appointment and Task Force Member Updates (*All*)
- ~ 9:50 ^a 2022 Meeting Dates & Locations (*All*)
- ~ 9:55 ^b ODFW Passage Program Staffing Updates (*Apke*)
- ~10:00 ^b Public Comment Period
 - *Public Testimony: 48-hour Advance Registration Required
- ~10:30 ^b HB 2298 - Environmental Weirs Update – (*Nordholm*) 10 min
- ~10:40 ^c Port of Portland - Sundial Exemption Request (*Nordholm*) 15 min
 - *Public Testimony: 48-hour Advance Registration Required
- ~10:55 ^c ODOT - OR 53 MP 4.59 Exemption Request (*Baki*) 10 min
 - *Public Testimony: 48-hour Advance Registration Required
- ~11:05 ^c Silvies Valley Ranch LLC - Jump Creek Exemption Requests (*Nordholm*) 30 min
 - *Public Testimony: 48-hour Advance Registration Required
- ~11:35 ^c ODOT – Ryder Creek Waiver Request (*Baki*) 15 min
 - *Public Testimony: 48-hour Advance Registration Required
- ~11:50 --- Break --- (40 minutes)
- ~12:30 ^b Anlauf/Harrington Project Update - (*Nordholm*) 5 min
- ~12:35 ^c ODOT – Indian Creek Waiver Request (*Baki*) 20 min
 - *Public Testimony: 48-hour Advance Registration Required
- ~12:55 ^b Oregon Administrative Rule Revision Initiative Updates (*Apke*) 30 min
- ~1:25 ^b ODOT - Culvert Repair Programmatic Agreement Funding Allocation (*Baki*) 10 min
- ~1:35 ^b Department of Forestry Fish Passage MOU Update – (*Ritchey*) 5 min
- ~1:40 ^b Other Business, Issues, Initiatives (*all*)
(ARPA \$\$\$ *Ritchey*, Volunteer Online Training *Nordholm*)
- ~1:55 ^a Meeting Recap, Actions Items and Dec 3rd Meeting Agenda Build (*staff*)
- ~2:00pm ***** Meeting Adjourn *****

*** PUBLIC TESTIMONY 48 HOUR ADVANCED REGISTRATION REQUIRED**

If you wish to provide verbal public comment on any agenda item you must pre-register before 9:00AM Wednesday October 13th, a minimum of 48 hour prior to the meeting. Written comment will be accepted and encouraged.

HOW TO REGISTER TO SPEAK AT THE October 15, 2021 TASK FORCE MEETING

When registering to speak please provide your first and last name, which agenda item you wish to speak to, a valid email address and phone number. Two ways that you can register to speak include: 1) send an email at greg.d.apke@odfw.oregon.gov ; the information listed above must be provided in your email, 2) call the

Department at 503-931-4361 and provide the information identified above. Submit written comments to the email address identified.

PUBLIC COMMENT

This is a virtual meeting through Microsoft Teams (*see above link*). If pre-registered to speak, you will be recognized by the Task Force Chair during the agenda item through Teams. The Task Force places great value on information received from the public and wants to avoid arbitrary limits on the time or attention allocated to each person. Therefore, persons desiring to provide verbal comment or otherwise present information to the Task Force are encouraged to: 1) limit comments to two (2) minutes, recognize that substance, not length, determines the value of comment or written information; 2) endorse rather than repeat comment(s) and 3) groups or organizations wishing to comment should designate one spokesperson whenever possible. Written comments are encouraged and will accepted.

Agenda Item Types: ^a – **Business**
 ^b – **Information**
 ^c – **Recommendation**
 ^d – **Work Session**

2021 Meeting Dates & Locations:
December 3

Virtual TEAMS Meeting Called to Order ----- at 9:04am

Chair Toledo called the meeting to order at 9:04am.

Raise hand if you want to be acknowledged. Mute if not speaking.

This meeting is being recorded.

~ 9:05 Review & Approve Agenda and June 4, 2021 Meeting Minutes (Chair Toledo)

Bierly moved to approve agenda. Cunningham second. None opposed. Motion passed.

~ 9:10 Fred Messerle Appointment and Task Force Member Updates (All)

Apke introduced Mr. Fred Messerle as the newest member of the Task Force. He was appointed approximately 6 weeks ago and lives near Coos Bay along the Coquille River. Has lots of experience representing water owners, users of artificial obstruction user groups, timber, and county government. Has lots of tide gate experience, Coquille watershed, and the tide gate partnership.

Mr. Messerle introduced himself and discussed his background and involvement with rule update process.

Bierly: Represents public. Nothing specific to report.

Snell: Represents water users. Nothing specific to report. Has been participating in rules update.

Cunningham: Represents public. Not much to report. BOR data indicates Wickiup Reservoir is at 2%, and Bowman at 19% of average. Other reservoirs and the Deschutes River also low right now. Passage has become beyond critical. Thermal barriers on lower Deschutes canceled steelhead season.

Albertelli: Represents regulated community. No significant update. Dam removal projects on Slate and Welter have been substantially completed. PacifiCorp provided some funding.

Turner: Represents fishing and conservation, with TU. Salmon SuperHwy had another successful construction season and has restored over 100 miles and closing in on program goal of ~ 180 miles of habitat reconnected. Working on NF Eagle Creek (Clackamas River Basin) passage project for 2022 implementation.

Hoffert: Represents fishing and conservation. Was successful in getting 6 Rogue barriers removed this year, including Harboldt and other barriers in Slate, Little Applegate, and Salt Creek basins. Eagle Fern dam in Clackamas also removed this year and she thanked ODFW's Dave Stewart for his assistance. Looking at other projects in future years. Leveraging recent projects to generate additional. 2021 dam removal photos shared on screen. Contact Denise if you want to see more pics.

Moore: Represents fishing and conservation. Looking like a La Nina season coming up. Ocean conditions point to a healthy coho run but more drought on east side forecast. Coastal spawning surveys starting this week. Over 600 sites will be surveyed. He mentioned difficulties finding enough seasonal employees to hire.

Toledo: Public representative. Impressed with ODFW beaver state podcast, encourage everyone to tune in. Recent podcase was on water planning in the Clackamas. Cover many topics. Appreciates dedication from agency staff and task force staff during virtual meetings. Last in-person task force meeting was Feb 2020. Missing the in-person interaction and field trips. Still lots being accomplished.

~ 9:50 2022 Meeting Dates & Locations (All)

ODFW and state office buildings closed to public through Dec 31 due to COVID 19.

Want to avoid task force meetings on same day as commission mtgs. Group decided on the following meeting dates for next year.

Feb 25, meeting

May 20/21, North Umpqua site visit based at PacifiCorp's site.

Oct 7, Salem meeting.

Dec 9, tentative pending work-load and need for this meeting.

~ 9:55 ODFW Passage Program Staffing Updates (Apke)

Josh Hanson the new ODOT passage assistant.

Been with ODFW 20 years and with the State of Oregon 25 years. Experience with passage and habitat restoration.

Katherine Nordholm the Screens and Passage coordinator.

Mike Harrington has replaced Ed Bowles as Division Administrator.

Shaun Clements replaced Bruce McIntosh as Inland Fisheries Deputy Administrator.

Shannon Hurn, Deputy Director for Fish and Wildlife is transitioning to Deputy Director for Administration.

Debbie Colbert will become the new Deputy Director for Fish and Wildlife Programs.

~10:00 Public Comment Period

*Public Testimony: 48-hour Advance Registration Required

No public signed up for public comment.

Mike Tripp expressed appreciation for openness of the Rules Update process and thanked ODFW staff for the work associated with this effort.

Public comment period closed at 10:05

~10:30 HB 2298 - Environmental Weirs Update – (Nordholm) 10 min

Have been working on rules for HB 2298, otherwise known as environmental restoration weirs. Specific to incised/eroded streams east of Cascades, with less than 1 cfs 2 months of the year. Other qualifications exist in HB 2298 and current draft rules.

If fish are present, they must meet current passage rules.

If no fish present, they do not have to meet passage criteria.

Met July 27 and Sept 14 specific to HB2298.

Received 11 public comments prior to the Sept 14 meeting

Current draft rules going through internal review

Expect to put out for public comment again around Nov 1.

Dec 3, 2021 FPTF meeting expect to have a version of rules for comment and recommendation from Task Force. Anticipate going to Commission in March 2022.

~10:40 Port of Portland - Sundial Exemption Request (Nordholm) 15 min

*Public Testimony: 48-hour Advance Registration Required

Apke provided an overview of fish passage waiver and exemption background, purpose, and authority related to the Task Force.

Incorporating climate change in this decision is being discussed with the rule revision process. Changing conditions will come into discussion with waiver and exemption strategies. Mitigation must show a greater benefit than passage at the site where the waiver is being requested.

There are no examples where the 7-year exemption review resulted in a change in exemption approval. These are reviewed but no sites have experienced this level of change from the decision point. Not that many exemptions have been issued. Approximately 60-70 exemptions issued since 2006 rules were adopted.

Task force role is to review the benefits analysis. Does it make sense. Is there additional information to consider. Task Force job is to make a recommendation on fish passage waiver and exemption proposed actions.

Specific to Port of Portland Application

Nordholm recorded presentation and all materials were presented online for review prior to this meeting. No questions were submitted. Two representatives submitted 3 public comments. A question if this situation was a trigger and what existed historically but generally supported the exemption. Another comment in favor of restoring passage at the downstream structure.

Questions:

1. Is the only access for fish by overtopping the levy during floods. Yes.
2. What is the likelihood of this? Infrequent, the Columbia flows are controlled by upstream dams. Levees are certified by ACOE so flooding would be extremely rare.

Bierly moved to recommend approval of the Port of Portland Sundial Exemption request. Toledo second. No task force members opposed. Motion passed 9-0.

~10:55 ODOT - OR 53 MP 4.59 Exemption Request (Baki) 10 min

*Public Testimony: 48-hour Advance Registration Required

Video presentation was posted online. Full barrier downstream. Fish can't access this culvert and fish not observed at this location. District staff supportive

2 public comments received.

1. Some confusion over which culvert this is. After working this out there were no concerns.
2. A citizen offered to take out the downstream culvert.

There could be changing conditions in the future at this one. If downstream culvert is fixed a reassessment may be considered in the future.

Questions

1. Application says it is assumed there are other barriers downstream. That hasn't been verified. Entire Soapstone has not been assessed but we know fish exist in Soapstone Creek.
2. What is likelihood of trigger at culvert downstream. ODOT does not know what ODF has planned for that culvert. Culvert does not appear structurally deficient. ODF has no plans to replace it.
3. Determination seemed reliant on previous ODF surveys. When does this survey data become outdated? Additional habitat conditions point to no fish being present. Not just reliant on the fish presence survey. Recommendation not just based on previous survey. Current conditions do not support fish.

Bierly moved approval of exemption request for OR 53 at MP 4.59. Turner second. No Task Force members opposed. Motion passed 9-0.

~11:05 Silvie's Valley Ranch LLC - Jump Creek Exemption Requests (Nordholm) 30 min

*Public Testimony: 48-hour Advance Registration Required

10 individual exemptions associated with this application. Video presentation was posted online.

3 public comments received

2 were in against exemptions in general

1 brought up water right at downstream dam exemption creep, and definition of native migratory fish.

A native fish (Speckled dace) was observed in the upstream reservoir, but this does not fall within the OAR native migratory fish used in the fish passage OAR's. Could not find exact date of downstream dam construction but it is between 1956 and 1981. Water right concern is within OWRD authority. ODFW did not rely solely on dam to make the determination of no benefit to NMF. Downstream area of Jump Creek is not connected to Silvies. Jump Creek terminates in downstream canal and field.

Thanks to Dave Banks and crew for obtaining more information as task force requested in 2019. Banks has nothing else to add but is available for questions.

Questions

1. These came before task force previously with three other creeks. What changed from 2019 to 2021? Pain Creek received passage approval. Flat Creek will also have passage. Jack Andy Creek is close to having passage. There was no change in our understanding of the fish populations in these creeks, just that the structures on these channels were easy to provide passage if not already providing passage.

2. Are these now considered environmental restoration weirs under HB2298? Structures have not been evaluated under HB2298. Some would likely qualify but some would not. Jump Creek is not downcut so it may not qualify for HB2298. Likely meets other criteria. Closed basin, eastside, low flows.

3. Has the applicant been notified of the possibility of a reservoir permit? They were asked for additional documentation and aware it was brought up in public comments. How would ODFW respond to recommend approving the waiver with conditions requiring OWRD requirements were satisfied? Even without dam, it would have the same recommendation due to the disconnect in lower stream below the reservoir. Dam removal does not change benefit for native migratory fish. There is not much of a channel below the dam. Water would still be captured by the ditch.

4. Need separate water right to store and take it out. Conclusion of no fish seemed based on the dams. Irrigation ditch should only be flowing during irrigation season. Speckled dace are not on list but list references "including", which indicates it's not exclusive? Speckled dace are native and move but they are not considered migratory that needs to migrate for life cycle needs. Waiting to hear back from OWRD on water right questions.

If something changes and Jump Creek reconnects with the Silvies, this could be reevaluated in the future.

Bierly moved to approve the exemption for Jump Creek. Cunningham second.

Moore, yes

Hoffert, yes

Turner, yes

Albertelli, yes

Snell, yes

Messerle, yes
Toledo, Yes

Motion passed unanimously (9-0).

~11:35 ODOT – Ryder Creek Waiver Request (Baki) 15 min

*Public Testimony: 48-hour Advance Registration Required

Video presentation was posted online.
District supportive of waiver.

Received 1 public comment
Opposed to waiver, Fall Creek should provide passage

Questions

1. Looked like emergency repair culvert was corrugated plastic? It was cement originally but new ends attached with significant amount of new material causing the trigger. What is life expectancy of repair? Will there be another trigger in the future and have to mitigate again? As long as the mitigation is functioning and no additional trigger event, the waiver still applies.
2. Are watersheds about the same size? Ryder is a bigger watershed. There is a chute that may be a barrier.
3. Did not see anything about design at mitigation site? This will be a 7' squish pipe, which is the active channel. Need extra fill to support large trucks. All waiver sites must meet passage criteria.

Cunningham moved to recommend approval of Ryder Creek Waiver Request. Turner second.
No task force members opposed and the motion passed unanimously (9-0).

~11:50 --- Break --- (40 minutes)

~12:30 Anlauf/Harrington Project Update - (Nordholm) 5 min

Waiver approved at a previous task force meeting. Details can be found in minutes and application materials. This mitigation project has been implemented. Also have monitoring requirements that are underway. Pre project monitoring completed August 27. Project implement August 30-31. There has been noticeable change in the system since project implementation. Increased complexity observed. 5 years of post-project monitoring will occur.

~12:35 ODOT – Indian Creek Waiver Request (Baki) 20 min

*Public Testimony: 48-hour Advance Registration Required

Video presentation and other materials posted on-line prior to this meeting.

3 public comments received

1. One person wanted culvert fixed. He grew up fishing there.

2. Concern with death of 1000 cuts
3. Mitigation seemed reasonable. Should consider temporal loss. Questions about different mitigation nearby? That mitigation is not what ODOT is proposing. Would mitigation occur anyways? Nothing was planned. Question about Powerdale Dam water right? Not relevant to ODOT proposal.

Questions

1. Reason for delay since 2016? Work searching for suitable mitigation.
2. Application has 2 phases, what are these. Two phases are design and implementation.

OAR 635-412-0025 requires fish passage mitigation occurs concurrent with the trigger, unless the Commission finds additional time is necessary. ODFW/Commission can ask for additional mitigation for temporal loss if there is delay between the trigger event and implementation of the mitigation. This project was a challenging site and difficult to find adequate mitigation. The proposed mitigation is expected to provide significant uplift for fish passage.

Bierly moved to approve the Indian Creek waiver request. Turner second.
No task force members opposed. Motion passed (9-0). This action will go to the Oregon Fish and Wildlife Commission for their consideration due to the amount of habitat situated above the culvert.

~12:55 Oregon Administrative Rule Revision Initiative Updates (Apke) 30 min

Lengthy process that has involved almost every task force member. Reached out to public in February and received approximately 300 comments. Department underestimated the time this rules revision initiative would take to complete. Wrapping up 3rd of 12 chapters in the rules. Definitions was a challenge that took a lot of time. Next meeting will present a close to final draft definitions section. Worked on task force and prioritization sections at last meeting (Oct. 12th). Some remaining chapters, such as waiver/exemptions and design criteria may take significant time.

Anticipate commission request mid to late 2022. Rule meetings are scheduled into March 2022. ODFW would like to have a final draft ready for Feb 25 task force meeting. Commission mtg will have its own dedicated public comment period. This expected timeline results in implementing the rules in 2023.

Question about climate change impacts and the statewide passage prioritization. ODFW is adding language to consider future expected conditions and consider preference for cooler water basins.

A few highlighted topics discussed in relation to potential rule changes.

Defining no appreciable benefit.

Added bridges to road and stream crossing section.

Fundamental change in permit status and exemption for dam safety modifications.

Native migratory fish list.

Roughened channel as a passage solution and associated criteria.

Trigger definition.

Green energy options. Existing ORS restrict creative mitigation alternatives.

Intersection of water law and fish passage.
Pushup dams
Tribal representation on the task force.

Comment provided to consider a more frequent review of the rules instead of once every 15 years.

~1:25 ODOT - Culvert Repair Programmatic Agreement Funding Allocation (Baki) 10 min

Conservation fund update. The fish passage conservation fund is part of the Culvert Repair Programmatic Agreement (CRPA) with ODOT. ODOT contribute funds to ODFW to apply to highest priority projects statewide, off the ODOT highway system. Current CRPA agreement expires at end of 2022. New CRPA under development and will be discussed at December task force meeting. Awarded funds to 8 projects in 2021 cycle. All 2021 awarded projects are on statewide priority list. Some projects awarded in previous years have been canceled and no funds expended.

~1:35 b Department of Forestry Fish Passage MOU Update – (Ritchey) 5 min

Waiting for OAR update to be complete prior to formalizing the MOA.
For stream simulation projects administered under the Forest Practices Act.
Includes increased monitoring, reporting, and fish salvage.
Tech Note 4 is still under development.

~1:40 b Other Business, Issues, Initiatives (all)

(ARPA \$\$\$ Ritchey, Volunteer Online Training Nordholm)
ARPA funds identified at 5 million for screens and passage. Waiting on DAS agreements

Volunteer online training. 248 hours of volunteer time contributed so far this year. This equates to over 10,300 dollars in value to ODFW.

Nordholm will send out link to task force members on annual volunteer training for members to complete. There are training modules available on the ODFW volunteer site, and requests members complete the harassment and covid trainings. Task force members also need to complete the policy review. Sign and date once you have reviewed and become familiar with volunteer policy. Explicit directions will be provided in a subsequent email from Nordholm.

~1:55 a Meeting Recap, Actions Items and Dec 3rd Meeting Agenda Build (staff)

Complete volunteer trainings and volunteer policy review that will be provided by Nordholm.

Apke will distribute the ODFW Beaver State podcast link.

Virtual Meeting Adjourned at 1:53pm