



OREGON DEPARTMENT OF FISH AND WILDLIFE
Fish Passage Task Force

MEETING MINUTES

February 26, 2021

Oregon Department of Fish and Wildlife
Salem, Oregon

Attending:

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

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
Burke O'Brien	Water Users, Chair FPTF
Steve Albertelli	Water Users
Terry Turner	Fishing and Conservation
Zak Toledo	Public-at-Large

ODFW

Title

Greg Apke	Statewide Fish Passage Coordinator, Salem
Pete Baki	ODFW-ODOT Fish Passage Liaison, Salem
Katherine Nordholm	Assistant ODFW-ODOT Fish Passage Liaison, Salem
Kregg Smith	Assistant Statewide Fish Passage Coordinator, Salem
Alan Ritchey	Fish Screens and Passage Program Manager
Bryce MacNab	The Dalles Screen and Passage Coordinator
Shaun Clements	ODFW Fish Division Deputy Administrator
Jeff Ziller	ODFW District Fish Biologist
Joseph Lemanski	ODFW District Fish Biologist

ODOT

Title

Allen Gillette	ODOT Biologist
Cash Chesselet	ODOT

Public

Organization

Ron ?	Guest
Thomas Whittington	ODF
Nicole Maness	Willamette Partnership
Jeff Busch	Guest
Michael Tripp	Guest



OREGON DEPARTMENT OF FISH AND WILDLIFE

Fish Passage Task Force

MEETING AGENDA

Oregon Department of Fish & Wildlife

Virtual (Skype) Meeting

Salem, Oregon

Friday – February 26, 2021 @ 0900 to 1248 hrs

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

~ 9:05^a Review & Approve Agenda and October 2020 Meeting Minutes (*Chair O'Brien*)

~ 9:10^b Task Force Vacancy Recruitment (*Apke*)

~ 9:15^a Task Force Member Updates

~ 9:30^b Tide Gate Program Updates (*Apke*)

~ 9:40^b ODOT Fish Passage Banking Pilot Project Report (*Baki/Maness*)

~10:00^c Public Comment Period

**Public Testimony: 48 hour Advance Registration Required*

~10:20^c Fin Roberts Creek Hwy 58 MP 44.54 - ODOT Exemption Request (Lane Cty)
(*Nordholm*)

**Public Testimony: 48 hour Advance Registration Required*

~10:30^c Rosary Creek Hwy 58 MP 64.27 - ODOT Exemption Request (Klamath Cty)
(*Nordholm*)

**Public Testimony: 48 hour Advance Registration Required*

~10:40^b Legislative Session Update – Relevant Bills (*Apke*)

~10:50 --- Break ---

~11:00^d Oregon Administrative Rule Revision Initiative (*Apke*)

~11:50^a Other Business, Issues, Initiatives (*all*)

~11:55^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

Burke O'Brien, Chair, called the Fish Passage Task Force (FPTF) meeting to order at 9:05 a.m.

2. Review and Approve Agenda and October 23, 2020 Meeting Minutes

Zak Toledo made a motion to approve meeting minutes, the motion was seconded by Ken Bierly. The Task Force members approved the minutes from the October 23, 2020 meeting and the motion passed with a unanimous recommendation.

3. Recruitment announcement for Fish Passage Task Force vacancy

Greg Apke presented to the task force members a request for nominations to fill the vacant water user's owner-operator of Artificial Obstruction position on the task force. Burke O'Brien appointment started in 2013 and he has served 8 years on the task force. The position will be vacated by the June 4 meeting. Volunteers will be needed to fill this position for a water user representative. Nominations for this position are going to be accepted to fill the position prior to the June 2021 meeting. Preferred location is for East Oregon representing the water user group.

Action:

Task Force Members should solicit candidates that represent Oregon water users and report back to ODFW staff.

Upcoming 2021 Task Force meetings:

February 26, 2021	Salem or Skype
June 4, 2021	Salem (location to be determined)
October 15, 2021	Salem or Skype
December 3, 2021	Salem or Skype

4. Task Force Member Round-table Discussions

The Task Force members introduced themselves and discussed fish and water related activities in their respective areas. Denise Hoffert reported on several fish passage projects that were funded by Resource Legacy Fund and the Paul G. Allen foundation. These private partnerships have funded projects for 2 dam removals in the Rogue basin, East Fern Creek dam removal in Clackamas County, and one culvert removal in the North Coast. Terry Turner provided updates on Trout Unlimited program staff presenting science on removal of the Snake River Dams and the Super Salmon Hwy culvert fish passage progress. Steve Albertelli discussed the work he is doing on permitting of projects in Josephine County. He also reported that PacifiCorp transmission lines were affected by recent Oregon Wildfires along with maintenance needs for several hazard trees. Bill Cunningham provided an update on the status of the four Snake River dams and energy policy introduced by Idaho Representative Simpson. Ken Bierly thanked ODFW staff for their participation at the Salem Towne fish passage project in the Glen Creek Watershed. Zak Toledo thanked ODFW staff for sharing the climate change policy and commented that a President Biden proposal may provide an opportunity to build back infrastructure to ensure transportation and climate resiliency. Kelly Moore introduced HB 2844 to prohibit or restrict beaver trapping and order ODFW to develop an annual report on the take of beaver. This bill removes beaver classification as a rodent and would place them under the classification as a predator. The bill proposes a key issue to beaver management.

5. Tide Gate Program Updates;

Greg Apke presented a handout and an update on the Tide Gate inventory and program funding. A new statewide tide gate coordinator has been hired to help tide gate owners with the regulatory process and coordination with partnerships. A regulatory process map has been developed to outline the steps needed for tide gate projects. A statewide tide gate inventory has been completed to more fully understand the issue of aging tide gate infrastructure on the Oregon Coast. The inventory is comprised of 959 tide gates along the Oregon Coast and lower Columbia River and is available online through a map viewer that is available to the public. The Nature Conservancy is working on upgrades to the inventory and web tools. Business Oregon is administering \$3 million in state funded grants and loans available for planning and construction projects associated with the repair and replacement of tide gates and associated infrastructure. Planning project awards are intended to result in construction-ready projects with all federal and state permitting, engineering, landowner coordination, and feasibility documentation completed through the project scope.

K. Bierly asked if the inventory identified public diking districts. This could be a layer added to the web mapping tool, but it does not identify private ownership.

Z. Toledo asked if the success of the partnership has been shared on social media. Success of the partnership and Business Oregon funding is noteworthy. Currently a webpage and online web tools and have been created for outreach and education on the tide gate partnership.

B. Cunningham asked if the tide gate inventory and climate change policy are aligned. Oregon climate change policy does not mandate tide gates or other structures, but provides ODFW with future direction to develop climate change into planning and policy.

6. ODOT Mitigation Banking Pilot Project

Nicole Maness from the Willamette Partnership presented an update on the ODFW-ODOT Mitigation Banking Pilot project. The North Coast Fish Passage Project piloted the use of a mitigation banking model to evaluate its effectiveness for restoring habitat for native migratory fish. High demand for transportation related fish passage waivers in this region and statewide. The pilot only applies to the North Coast OWRD basin. ODOT was both the sponsor of the bank and its only user. Impacts to habitat are debited in limited amounts from fish passage mitigation banks – locations where high priority barriers are removed and significant benefits for native migratory fish are created. The amount of native migratory fish habitat created at a bank site or impacted by a project is defined in terms of *credits* or *debits* – units of fish habitat quality and quantity as measured by a habitat quantification tool. Willamette Partnership and The Nature Conservancy developed a Net Benefit Analysis (NBA) Tool that combines site and watershed scale information to calculate an index of habitat quality for native migratory fish. That measure is combined with the quantity of newly accessible habitat to calculate the benefits (or credits) generated by improvement of passage at a barrier or its removal. The NBA Tool was used to quantify debits of waiver sites. The Fish Passage Pilot project was implemented in 2015-2018 with project completion in 2021. ODFW and ODOT developed Oregon's first fish passage mitigation bank (pilot project) by removing a high priority barrier on the East Fork of the South Fork of the Trask River in August 2016, opening up ~23 miles of stream habitat for native migratory fish in the north coast. In exchange, ODOT used this credit to waive projects that triggered the state's fish passage requirements also in the north coast.

7. Public Comment Period:

No pre-registration was received for the open public comment period. Guests on the Skype Meeting indicated that they were just listening to the meeting. No public comment was presented at the meeting.

8. Fin Roberts Creek Hwy 58 MP 44.54 - ODOT Exemption Request

ODOT has applied for a fish passage exemption request as part of the Hwy 58 seismic upgrades for a culvert replacement on Fin Roberts Creek, a Salt Creek tributary located in Lane County (-122.302161, 43.711019). A benefit analysis performed by ODFW staff showed that providing fish passage at this site would not result in an appreciable benefit to native migratory fish.

Written Public Comments:

One comment received by Brian Posewitz with Water Watch of Oregon indicated that the exemption seems reasonable.

One written public comment submitted for both ODOT Exemption Requests requested fish passage should be provided at all sites.

Motion:

Ken Bierly made a motion to recommend the fish passage exemption for Fin Roberts Creek to ODFW, Zak Toledo seconded the motion and the Task Force unanimously approved 9-0.

9. Rosary Creek Hwy 58 MP 64.27 - ODOT Exemption Request

ODOT has applied for a fish passage exemption request as part of the Hwy 58 seismic upgrades to repair two culverts on Rosary Creek, a tributary to Odell Lake located in Klamath County (-122.302161, 43.711019). A benefit analysis performed by ODFW staff showed that providing fish passage at this site would not result in an appreciable benefit to native migratory fish.

Written Public Comments:

One comment received from Water Watch of Oregon (Brian Posewitz) stated that the 50 feet of habitat above the culvert could provide an “appreciable benefit.” Moreover, the stream above the ODOT maintenance site should be considered because there appears to be a reasonable possibility of future passage across the maintenance site, meaning that passage under the highway would provide incremental progress toward providing access to the entire stream. That said, it appears the existing highway culvert provides some passage and will continue to do so, meaning the benefits of passage would be only the difference between partial and full passage.

Task Force Discussion and Comments

Z. Toledo asked if the ODOT CRPA programmatic agreement would be a better option and not an exemption. The site does not have a perched condition, but is comprised of two barrel culverts. The culverts were evaluated as potential CRPA projects by ODOT and ODFW and did not meet site conditions making them eligible for the CRPA.

T. Turner asked if there was any cases of exemptions that have been overturned after the review period of seven years. ODFW staff replied that no exemptions have been overturned, but site

conditions and a review of each exemption have been performed to assess whether habitat conditions have changed to warrant fish passage.

Motion:

Bill Cunningham made a motion to recommend the fish passage exemption for Rosary Creek to ODFW, T. Turner seconded the motion and the Task Force unanimously approved 9-0.

10. Legislative Session Update – Relevant Bills

ODFW staff presented information on HB 2610 and HB 2298. House Bill 2610 requires the Oregon Fish and Wildlife Commission (Commission) waive the requirement for fish passage when artificial obstructions less than eight feet tall are repaired or replaced. This bill also requires the Commission waive fish passage when the artificial obstruction is a dam that provides hydropower, drinking water, irrigation water; creates fish habitat; and providing fish passage would increase the project cost by more than 10 percent. HB 2610 was not referred to the Water Commission as of the Task Force meeting on February 26, 2021 and ODFW continues tracking the bill.

HB2298 pertains to the construction of environmental restoration weirs constructed east of the Cascades and within the closed basin. HB 2298 had one session within the Water Commission on February 2, 2021; but no further work session or updates have been provided to ODFW.

Task Force Discussion and Comments:

K. Bierly asked ODFW staff about HB 2298 and whether the department would develop additional rules. If passed, then ODFW would have a year to develop administrative rules.

Task force members asked what their role would be pertaining to HB 2610. Action to provide testimony either individually or as a Task Force would be an option for members to take.

11. Oregon Administrative Rule Revision Initiative

Greg Apke provided an update to the Task Force Members on upcoming work to consider revisions to the state's fish passage administrative rules (OAR 635-412-0005 through 0040). No rule changes have occurred since 2006 and this is a priority task for ODFW Fish Passage program. Apke also provided the context of the ODFW Climate and Ocean Change Policy, previously distributed to the Task Force, and how this identifies and mandates key principles of this policy to be incorporated into ODFW programs, plans and policy. Apke outlined the Task Force's role as the Rules Advisory Committee (RAC). The RAC will assist the ODFW by identifying stakeholder issues, review public comments, provide guidance to ODFW staff, and make recommendations to ODFW and the Oregon Fish and Wildlife Commission (OFWC) on administrative rule change considerations. A sub-committee within the Task Force was formed and will meet bi-monthly in a public meeting venue with ODFW and will provide ODFW with guidance from the three stakeholder groups that are represented by the members (Public at Large, Water Users, and Fishing and Conservation). The RAC sub-committee is represented by T. Turner, Z. Toledo, B. Cunningham, S. Albertelli, K. Moore, and K. Bierly. The RAC sub-committee will meet with ODFW staff twice a month on Tuesdays and each meeting will be open to the public through virtual a virtual meeting platform (SKYPE or TEAMS). The goal is to provide OFWC with recommendations to administrative rule changes at the October 14, 2021 OFWC meeting. ODFW

will develop public outreach opportunity that will be part of a public news release to announce stakeholder meetings and public advisory sub-committee meetings. ODFW will distribute the media release as soon as possible. Task force members recommended that technical issues and policy issues are and should be separated to help focus discussions. Task Force members discussed what the vision was for OAR changes and updates to any new OAR's. ODFW expects new OAR revisions will be proposed, and if necessary and appropriate, legislative concept(s) may be required for any changes in corresponding statutes, if necessary. Some rule change considerations should be simple clarification of triggers, definitions, and intent; whereas other changes are proposed to provide criteria based on new technology or science. ODFW will consider economic impacts to landowners through a review by ODFW staff economist that will develop a Fiscal Impact Statement (FIS) associated with proposed rule changes. Task Force members asked for an explanation on the Active Channel Width (ACW) source of proposed change. This change is proposed to meet federal criteria, the ODFW Climate and Ocean Change policy, state transportation network upgrades, and clarification on hydrology conditions in estuaries where ACW may not be the appropriate field indicator for appropriate sizing of fish passage solutions, particularly culvert crossings.

ODFW and Task Force members reviewed a list of stakeholder groups and partners that were overlooked. The list of stakeholder groups will be updated based on membership input.

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

Smith reviewed the meeting action items and the Task Force sub-committee meeting dates and participants.

13. Adjourn

Burke O'Brien made a motion to adjourn the meeting and Terry Turner seconded the motion. The meeting was adjourned at 12:48 p.m.

Items to be included in future meetings may include:

- Potential Oregon Administrative Rule changes
- Fish Passage and Screening Guidance Manual
- Fish Passage Waivers and Exemptions