



Native Fish Society

PO Box 568

Molalla, OR 97308

Fighting for the Future of Native Fish

Conserving biological diversity of native fish and protecting their habitats

Oct. 30, 2008

Memorandum

TO: Karen Williams, DEQ

FR: Bill Bakke, Executive Director

Tom Derry, Mark Schmidt and Russell Bassett, Molalla River Stewards

Tom Davis, P.E., Upper Deschutes River Steward

RE: Comments on the Molalla-Pudding Subbasin TMDL draft

The Native Fish Society is pleased that ODEQ conducted a study to evaluate streams not meeting the Clean Water Act criteria for temperature, bacteria, toxics, metals, and dissolved oxygen in the Molalla-Pudding Subbasin. We also look forward to working with DEQ and other agencies to ensure the Water Quality Management Plan successfully fixes the issues of the Molalla River drainage.

NFS has the following comments on the Molalla-Pudding TMDLs:

Overview, Page 13, Fish Use: Winter steelhead and spring Chinook both rear in the upper part of the Molalla River. Most anadromous fish don't move more than half a mile from where they leave the gravel until the smolt stage unless out of necessity. Since the vast majority of spawning for both these species occurs above river mile 25, the majority of rearing does not occur in the lower river, where temperatures are warmer.

We know that the remnant population of Coho in the Molalla River use Milk, Woodcock, Shady Dell, Cedar and Russell Creeks to spawn, and that they also rear upstream of Milk Creek.

If DEQ has evidence that shows that Molalla River anadromous fish rear more in the lower river than they do in the upper river, we would like to see it.

Overview, Page 17, North Fork Molalla Watershed: While there is a road paralleling Cougar Creek that creates some sedimentation problems in high flood events, Cougar is a pristine stream with several constructed large woody debris areas that provide excellent habitat for wild winter steelhead and we do not consider it in poor condition.

We want to ensure that Cougar Creek and the rest of the North Fork (the only fork not a temperature TMDL concern) does not become an issue due to the next round of timber harvest.

Chapter 2, Page 55, Surrogate Measures: Lack of riparian vegetation is likely the primary reason for the Molalla’s temperature listings, and we are very concerned about the impacts of timber harvest to the river. Oregon DOF forest practices require only a 20-100 foot riparian buffer depending on stream size and water right allocations. This is much less than the 180-200 foot average required by federal forest practices. Weyerhaeuser (which only has to comply with the state requirement) owns 70,000 acres in the Molalla drainage, and the vast majority of their timber lands are scheduled for cutting in the next 50 years.

The measures outlined in the WQMP will have little to no effect (regarding temperature) if timber practices continue to encroach on the water. DEQ, ODFW and other state agencies, as well as USFS, BLM and other federal agencies need to collaborate with DOF to greatly increase the required riparian buffer on private land. DOF programs are discussed in more detail later in these comments.

Purchase of private lands could also be a tool to protect critical fish habitat. If one or both of these measures are not done, it is likely the North Fork of the Molalla River will also be listed for temperature in the near future.

Chapter 3, Page 15, Molalla River: NFS appreciates that DEQ created a TMDL for bacteria even though additional data collection completed before the 2004/2006 303(d) list release indicated that the Molalla River did not violate the current *E. coli* criteria, and we would like to see the environmental regulating agencies develop TMDLs for endocrine disrupters, hormone balancers and other pharmaceutical drugs that go unchecked and unregulated into river systems throughout Oregon.

NFS has the following comments on the Molalla-Pudding WQMP

Chapter 7, Page 5, General Strategies: The general strategies outlined in the WQMP are excellent and right on target, although NFS does not believe working inside the existing framework will achieve increased riparian restoration and protection, restore natural stream flow, increase stream flow, reduce sediment delivered to streams, manage fertilization runoff, and manage irrigation.

A 2005 EPA letter to ODFW regarding the Oregon Coastal Coho Plan stated similar concerns,

“Continued implementation of the existing regulatory framework in Oregon does not adequately address widespread water quality problems and will not meet the goals in the CCP” ... “there is a significant body of science demonstrating that regulatory programs in Oregon do not adequately protect water quality and associated beneficial uses (e.g., salmonid spawning and rearing, public water supply).”

New frameworks that place a priority on water quality rather than stream use must be created to ensure these strategies are effective.

Chapter 7, Page 7, Relationship of Management Strategies to Attainment of Water Quality Standards: DEQ needs to ensure that point sources of pollution abide by their permits. On way too many occasions in the past, DEQ has allowed point sources to exceed their permits with little or no action taken against the violator. The numerous Clean Water Act violations by the city of Molalla in the past at Bear Creek are a prime example, as are the cities of Hubbard and Aurora’s wastewater treatment plants.

Chapter 7, Page 15, City of Molalla Drinking Water Plant: DEQ’s permits for the City of Molalla Drinking Water Plant should be adequate for controlling outflow temperature at the plant, but intake was not adequately addressed in the report. While the plant currently does not exceed its intake permit, due to population growth, it is likely that it will in the future. Lack of stream flow is another main reason for temperature listings, and the plant’s design flow rates are enough to considerably reduce stream flow.

In addition, the city of Molalla has a permit to withdraw water from Trout Creek, and should this be allowed to happen, it would be a disaster for temperature in the river. Trout Creek contributes significantly to flow in the Molalla River and its confluence is the main thermal refuge for spring Chinook.

DEQ needs to work with the City of Molalla to minimize intake at its current location, and should do everything in its power to ensure the city of Molalla does not withdraw water from Trout Creek.

Chapter 7, Page 16, DMAs Not Covered by an MS4 Permit: Storm water control measures should be required for cities over 1,000 not 10,000. Expecting DMAs with populations under 10,000 to give consideration to storm water control measures will not work. Oregon should also look at establishing regional facilities for stormwater management such as sedimentation ponds and constructed wetlands.

Chapter 7, Page 16, Management Strategies for Nonpoint Sources: As stated earlier, NFS does not agree that current DOF forest practices are good examples of forestland water protection best management practices. Better practices would be for DOF to adopt federal forest practices and ensure that private lands comply with these practices. Furthermore, listing “maintain riparian vegetation with a 20-foot no harvest zone of trees and 10-foot zone no disturbance of all understory vegetation ...” as a “best management practice” is actually harmful as this only applies to streams listed as small and is nowhere near an adequate amount of riparian buffer.

The following are quotes from the 12/05 letter from EPA on the Coastal Coho Plan, and we believe it applies to the Molalla-Pudding TMDL area.

“... there is a substantial body of science demonstrating that Oregon’s existing forest practice rules and best management practices do not consistently meet water quality standards or fully provide riparian functions important to water quality, public water supplies and fish. Expert reviews and research have identified the need for increased protection of riparian management areas and landslide prone slopes in Oregon for both fish and non-fish streams to provide functions important for fish and water quality. ... additional revisions to the rules are needed to ensure water quality standards will be met and that beneficial uses such as salmonid spawning and rearing will be fully protected.”

“EPA does not believe the CCP’s use of the existing Oregon Forest Practice Act regulations (FPA) will achieve the desired status goal for the Coastal Coho ESU.”

“... EPA believes the existing FPA and SB 1010 plans do not adequately support the desired CCP goals for Coastal Coho habitat.”

Chapter 7, Page 17, Agriculture Lands: The ODA needs to go beyond trying to monitor for damage caused by fertilizers, herbicides and pesticides and prohibit the use of agriculture products that harm water quality before they become a problem to the watershed. There are cost-effective green alternatives that should be mandated.

Too many times, NFS has heard of fish kills in entire streams due to runoff and dumping from agriculture, and this would have been less likely if ODA had outlawed the use of the product that caused the fish kill before it became a serious problem.

Chapter 7, Page 17 Agriculture Lands: ODA and DEQ should take a harder look at DDT, Chlordane, Dieldrin, and all other banned pesticides. Voluntary turn in of banned chemicals is a great idea, and we appreciated the efforts made by DEQ and Marion SWCD to collect banned chemicals. Those efforts should be followed up with inspections, especially of nurseries. DEQ should conduct an extensive survey to determine what remnant populations of these pesticides still exist.

Another tool that could be used to help find legacy pesticides is to establish a citizen monitoring program. This program could be used to not only monitor banned pesticides, but could also be used to document non-point source violations, and runoff, over-development and erosion issues. A good model for this program is Clackamas County’s Dump Stoppers program, which has made great strides to stop dumping in the Molalla River Recreation Corridor.

Many local citizens already use their camera to document pollution and other problems. They need to be encouraged, and DEQ needs to provide a phone number, e-mail and primary contact for the citizen monitoring program. DEQ could also provide training to better ensure accurate data and help alleviate trespassing issues.

Chapter 7, Page 18, Urban and Rural Lands: As the overseer of state agencies regarding land use, the Oregon Department of Land Conservation and Development and the Land Conservation and Development Commission need to put a lot more muscle behind ensuring improved fish runs, less water quality impairment from land development and practices, and more water flow. The DLCDC, in conjunction with DEQ needs to have enforceable requirements and then ensure the regulating agencies, i.e. the local jurisdictions, implement and enforce those requirements.

The LCDC has the ability to designate areas of special concern, but they have not designated a new one for decades and have designated no watersheds that drain to special waters for our declining native anadromous and resident salmonids. For example, the entire Molalla River Drainage above Glen Avon Bridge is a very special place and should be given the highest protection offered by the State.

Chapter 7, Page 19, Plan to Monitor and Evaluate Progress Toward Achieving TMDL Allocations and WQS: NFS looks forward to reading this plan.

Chapter 7, Page 21, Cities and Counties: NFS encourages DEQ to regularly monitor the in-stream data collected from the four sites of the Molalla River by the City of Molalla in order to ensure permit compliance and to ensure proper data collection.

Chapter 7, Page 28, Waste Load Allocations: While trading and mitigation can be an effective tool, DEQ should not rush to allow point and non-point sources to continue to hurt water quality at the source by mitigation at another site. Another effective tool would be to require point and nonpoint sources already in place to not violate TMDL standards, and if they don't, require mitigation.

General Comments:

- Should be focused on no impact rather than low impact. “Low” is very subjective.
- An erosion hazard study should be conducted to determine where sheet and mass erosion are most likely to occur throughout the drainage.
- More research needs to be done to determine with certainty where nitrates are entering the watershed.
- In the head waters, we need to be talking about decommissioning roads not restoring and building them.
- ATVs impact in the watershed should be studied further.

As stated earlier, NFS is very thankful to DEQ for creating TMDLs for the Molalla-Pudding Subbasin and for creating the WQMP. While we are concerned the plan is not far enough removed from the status quo to accomplish its objectives, we believe the documentation is professionally done, and the effort is a step in the right direction. We

would like to see Karen Williams remain in charge of this subbasin for DEQ, and we look forward to working with the agencies to improve water quality and flow for the entire Molalla-Pudding Subbasin. Our hope is that the area can become an example for the rest of the state in regards to water quality and stream flow.

Sincerely,



Bill Bakke
Executive Director



Mark Schmidt
Molalla River Steward



Tom Derry
Molalla River Steward

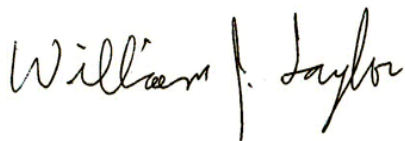


Russell Bassett
Molalla River Steward



H. Tom Davis, P.E.
Upper Deschutes River Steward

Molalla RiverWatch agrees with and supports these comments.



Bill Taylor
Molalla RiverWatch President



Kay Patteson
Molalla RiverWatch Executive Director