

Agenda Item Summary

BACKGROUND

Following extensive analysis, testimony and deliberation on options for Columbia River Fisheries Reform, the Oregon Fish and Wildlife Commission (OFWC) adopted the “Enhanced Commercial Rebalance” scenario, with slight modifications, at its January 20, 2017 meeting. Primary details are as follows.

- Spring Chinook 80/20 sport/commercial allocation of allowable ESA impacts. Commercial priority to off-channel large-mesh gillnet fisheries not constrained by run-size buffer. Mainstem commercial fisheries only occurring with tangle net gear after the run update if remaining impact balances allow.
- Summer Chinook 80/20 sport/commercial allocation of harvestable surplus; large-mesh gillnets allowed for mainstem commercial fisheries.
- Fall Chinook 66/34 sport/commercial allocation of allowable ESA impacts of the limiting fall Chinook stock (tule or Snake River wild), and $\leq 66/\geq 34$ for the non-constraining stock. Large-mesh gillnets allowed in mainstem commercial Zones 4-5; commercial Coho fisheries restricted to tangle nets in Zones 1-3.
- The concept of establishing a conservation fishery by setting aside a portion of non-tribal impact allocations to target hatchery fall Chinook and Coho in the lower Columbia River was supported, but not authorized.
- Off-channel (SAFE) releases: Mitchell Act hatchery reductions required by NOAA are incorporated; additional 500K spring Chinook released from Gnat Creek Hatchery, 390K spring Chinook to backfill Coho cuts released at current Oregon sites, and 250K spring Chinook at Westport Slough (if/when assessments completed) and at an existing site in the interim.
- Barbed hooks allowed in off-channel sport fisheries and the Willamette River.
- Youngs Bay sport closure remains in effect.
- Intensive monitoring of fall Chinook gillnet fisheries to further evaluate steelhead and sturgeon encounters.

Rules carrying out this decision became effective February 1, 2017.

These rules differ from the policy Washington Fish and Wildlife Commission (WFWC) established at their January 14, 2017 meeting. There are four primary differences that may lead to non-concurrent regulations (e.g., different state regulations not conducive to bi-state fisheries and enforceable only within that state’s boundaries).

- OFWC rules allow spring mainstem tangle-net fisheries post run-update if impacts are not needed in off-channel, WFWC policy does not.
- OFWC rules allow summer mainstem gillnets, WFWC policy does not.
- OFWC rules have a 66/34 sport/commercial allocation of fall Chinook impacts, WFWC policy has an initial 75/25 sport/commercial allocation for 2 years then shifts to 80/20.
- OFWC rules do not have a sunset provision for gillnets in mainstem Zones

4-5 during fall fisheries, WFWC action includes a 2-year sunset provision for gillnets on the mainstem.

On January 20, 2017, the Commission authorized the Director to negotiate options for concurrence with the Washington Director but report back to the Commission for approval before taking any adaptive management actions. To date, there is no progress to report. Accordingly, staff have prepared additional information and further analysis for the Commission's consideration.

Additionally, on February 9, 2017, Governor Kate Brown wrote a letter to OFWC Chair Michael Finley requesting that the Commission "adopt rules that clearly match policy and law in the state of Oregon and the policies of my administration." (Attachment 4). The Governor's letter also identified the January ODFW staff recommendation and the January WFWC action as consistent with her request, and clarified that non-concurrence was unacceptable and would "make enforcement complicated, confusing and untenable, and put at risk ongoing funding and bi-state cooperation necessary for fishery reforms." The Governor added an expectation that the OFWC would revise the rules by April 3, 2017.

As indicated at the February 9, 2017 Commission meeting, ODFW staff filed notice with the Secretary of State, provided notice to interested parties, and added Columbia River fisheries reform to the agenda for the March 17, 2017 OFWC meeting to provide the opportunity for the Commission to amend the Columbia River Recreational and Commercial Fisheries Management rule. Note: Any rules adopted by the OFWC at their March Commission meeting cannot take effect until April 5, 2017.

PUBLIC INVOLVEMENT

Columbia River Fisheries Reform has had extensive public involvement during initial development of the policy and at annual Commission updates throughout the transition period. There has been opportunities for public involvement in the rulemaking process for the current rules at the November, 2016, and January, 2017, Commission meetings. In addition, a Rules Advisory Committee of three commercial fishers/processors, three sport fishers/industry, and one conservation representative was convened on February 14, 2017, to advise the agency on potential rule text and any associated fiscal impacts for the staff's consideration in drafting proposed rules and the FIS. Agency staff appreciates input provided by the Rules Advisory Committee, and considered their input in developing the FIS and staff recommendation. There will also be opportunity for public involvement at the March 17, 2017, Commission meeting.

ISSUE

CONCURRENT/ORDERLY FISHERIES, ALIGNMENT WITH GOVERNOR DIRECTION

ANALYSIS

Risks of Non-concurrent Gear and/or Allocations in Bi-state Fisheries

As stated in the January Agenda Item Summary, non-concurrent regulations related to gear and allocations in bi-state managed fisheries come with several risks. First, if non-concurrent fishing regulations exist, enforcement agencies from each state are functionally confined to enforcing only their respective state's rules within their state's boundaries. When rules are sufficiently similar in each state, enforcement officers from either state can enforce regulations in all joint waters (functionally the mainstem). This inability to enforce regulations throughout the mainstem creates enforcement problems and undermines conservation protections in both states.

Second, reciprocity agreements allowing individuals to fish (commercially and/or recreationally) in joint state waters is facilitated by concurrent regulations. Reciprocity allows individuals licensed in one state to also fish in the other state (in joint waters of the Columbia River) as long as regulations are primarily concurrent. If rules are non-concurrent, individuals could be required to be licensed in the state waters they are fishing (Figure 1).

Third, management of Columbia River fisheries is complex and allocations, gear requirements, season structures, etc., all have far-reaching effects. It is difficult to foresee the potential outcomes of non-concurrence in allocation, allowable fishing gears, times, or techniques, between the states. The statutory language of the Columbia River Compact (ORS 507.010, 507.020, 507.030) could potentially address these issues at least in part; however, the court record related to the Compact is complicated and it is difficult to predict how a court may interpret the 1918 Compact language in 2017. One possible outcome of significant non-concurrence could be a subdivision between the two states of the overall allocation, which would then be allocated per individual state policy and/or rule, in individual state waters within the Columbia, and managed per individual state policy and/or rule. The end result of which could be a fishery that overlaps in both time and space but had separate gears fishing with separate landing requirements.

Fourth, non-concurrent regulations can increase the risk of losing significant economic value of bi-state managed fisheries. This risk becomes real when the two states are unable to resolve substantive differences affecting joint fisheries. For example, unresolved allocation differences in the past have resulted in the difference remaining unallocated. Depending on the magnitude of this difference, the economic impacts to both commercial and recreational fisheries can be significant.



Figure 1—State boundary line from the mouth of the Columbia River to Bonneville Dam.

Areas of Non-Concurrence

Although similarities exist between the two policy actions, the first three differences outlined in the background section of this summary are situations where regulations in the jointly managed Columbia River will not be the same beginning in 2017. The first two scenarios discussed in the background section would allow only commercial fishermen with an Oregon permit to participate in spring tangle net fisheries or summer gill net fisheries, and they would be allowed to land their fish only in Oregon (Figure 1). Additionally, non-concurrence on mainstem summer commercial gears will also impact allocations. The total commercial allocation of 20% (minus approximately 3% necessary for off-channel fisheries) will likely have to be split between Oregon and Washington, with about 8% going to Oregon mainstem gillnet fisheries and 8% going to Washington mainstem alternative gear fisheries.

The third non-concurrent scenario is, at present, a matter of allocation rather than gear non-concurrence. The current situation, 66/34 for Oregon versus 75/25 for Washington is a substantial difference of 9% and unprecedented in recent times for resolution between the states. Smaller differences in the past have been resolved by splitting the differences or leaving the differences unallocated. Both commissions asked their Director to discuss opportunities for concurrence, but did not delegate negotiating authority without Commission approval (Oregon) or discussing with the Chair (Washington). To date, discussions between states have not provided any suggestion of resolution. The most likely outcome of non-concurrence of this magnitude will be to leave the difference unallocated, resulting in a functional allocation of 66/25 with 9% unallocated. A similar approach was used several years ago due to different allocations for spring fisheries, although the magnitude was much less. The economic impact of not allocating the 9% difference is significant for both commercial and recreational fisheries.

If Washington agreed, the 9% could perhaps be used for a lower Columbia River conservation fishery targeting hatchery Chinook and coho, but at this time such an agreement seems unlikely. Another scenario could include establishing a bi-state fishery at 66/25 until the fishery was completed, then allocating an additional 4.5% to Washington licensed sport anglers fishing in Washington waters only, and 4.5% to Oregon licensed gillnetters fishing in Oregon waters only. This scenario would be very difficult to manage and enforce and is not recommended. Another scenario could simply split the total available allocation in half and let each state manage commercial and recreational fisheries at commission-authorized allocations in their respective state waters only. Not only would this last scenario be difficult to manage and enforce, but could also significantly reduce economics for Oregon fisheries.

Governor Brown's letter identified two options that she felt were acceptable, because each "provides a clear and enforceable path forward." These options are (1) the ODFW staff recommendation from the January 20 meeting and (2) the WFWC policy adopted on January 14, 2017.

Analysis of Options

The Commission-adopted rules are current law. These existing permanent rules provide a basis for comparing options under consideration at the March Commission meeting relative to economic benefits to the state, economic viability, concurrent and orderly fisheries, conservation, funding, and the Governor's direction. Three alternative options are presented for comparison. The first is the staff recommendation from January, the second is the WFWC action from January, and the third is a new staff recommendation that is a slight modification from January, with some adjustments to strengthen conservation, increase likelihood of concurrence to promote orderly fisheries and avoid economic loss from unallocated impacts, and add some additional commercial benefits that will not increase risk of non-concurrent regulations.

January staff recommendation

- Spring Chinook 80/20 sport/commercial allocation of allowable ESA impacts. Commercial priority to off-channel large-mesh gillnet fisheries not constrained by run-size buffer. Mainstem commercial fisheries only occurring with tangle net gear after the run update if remaining impact balances allow.
- Summer Chinook 80/20 sport/commercial allocation with an off-channel priority. Mainstem gears exclude gillnets. Unused commercial impacts rolled to sport fisheries above Bonneville.
- Fall Chinook 70/30 sport/commercial allocation split of the limiting Chinook stock with large-mesh gillnets allowed in mainstem commercial Zones 4-5; Coho fisheries restricted to tangle nets in Zones 1-3.
- Establish a fall "conservation fishery" targeting lower river hatchery fish using a small percentage of wild tule Chinook ESA impacts taken "off the top" from ocean and Columbia River non-treaty allocations.
- Off-channel (SAFE) releases: Mitchell Act hatchery reductions are incorporated; additional 500K spring Chinook released from Gnat Creek, 390K spring Chinook to backfill Coho cuts released at current Oregon off-channel sites, and 250K spring Chinook to Westport Slough (if/when assessments completed) and at an existing site in the interim.
- Barbed hooks allowed in off-channel sport fisheries and the Willamette River.
- Remove sport closure off mouth of Youngs Bay.
- Monitoring of fall Chinook gillnet fisheries in zones 4-5 to further evaluate steelhead and sturgeon encounters.

WFWC Policy (as interpreted by ODFW staff for modeling)

- Spring 80/20, off-channel gillnet fishery (no mainstem commercial).
- Summer 80/20, no commercial gillnets, but assumed that accessing allowable commercial allocation was possible with other gears.
- Fall Chinook 75/25 for 2017-2018, 80/20 2019+ for most constraining stock, Coho tangle net in Zones 1-3.
 - Mainstem gillnets in Zones 4/5 for next 2 years.
 - Continue alternative gear assessments w/presumptive replacement of gillnets for fall fisheries after 2018.

- MSF beach and purse seine fisheries in Zones 1-5; non-MSF purse seine in Zones 4-5 (allocated roughly 50:50). This approach was taken to address the WFWC objective of increasing mark-selective commercial harvest of hatchery tule Chinook in the lower river and accessing valuable URB Chinook.

March staff recommendation

- Spring Chinook 80/20 sport/commercial allocation of allowable ESA impacts. Commercial priority to off-channel large-mesh gillnet fisheries not constrained by run-size buffer. Mainstem commercial fisheries only occurring with tangle net gear after the run update if remaining impact balances allow.
- Summer Chinook 80/20 sport/commercial allocation of harvestable surplus; large-mesh gillnets not allowed for mainstem commercial fisheries.
- Fall Chinook 70/30 sport/commercial allocation of allowable ESA impacts of the limiting fall Chinook stock (tule or Snake River wild), and $\leq 70/\geq 30$ for the non-constraining stock. Large-mesh gillnets allowed in mainstem commercial Zones 4-5; commercial Coho fisheries restricted to tangle nets in Zones 1-3.
- Establish a sport and commercial conservation fishery targeting hatchery fall Chinook and Coho in the lower Columbia River using the 5% allocation difference between current staff recommendation and WFWC policy, if it remains available.
- Off-channel (SAFE) releases: Mitchell Act hatchery reductions required by NOAA are incorporated; additional 500K spring Chinook released from Gnat Creek Hatchery, 390K spring Chinook to backfill Coho cuts released at current Oregon sites, and 250K spring Chinook at Westport Slough (if/when assessments completed). Begin 250K “Westport” releases immediately at Tongue Point as assessments are completed. Add another 360K spring Chinook to off-channel areas to further supplement commercial economics.
- Barbed hooks allowed in off-channel sport fisheries and the Willamette River.
- Youngs Bay sport closure remains in effect.
- Intensive monitoring of fall Chinook gillnet fisheries to further evaluate steelhead and sturgeon encounters.
- To further enhance conservation and strengthen wild and hatchery runs, reaffirm Commission support for the State of Oregon’s efforts to improve fish survival associated with the Federal Columbia River Power System.
- Working with management partners, seek to better spread mark-selective spring Chinook sport fisheries across the run timing through consistent “rolling openers,” which can help enhance conservation and address longstanding concerns from some *US v Oregon* management partners.

The primary differences between the January staff recommendation and the current rules are the use of summer mainstem gillnets (staff recommendation no, Commission yes), emphasis on conservation fishery (staff recommendation more, Commission less), fall sport closure off Youngs Bay (staff recommendation no,

Commission yes) and fall Chinook allocation (staff recommendation 70/30, Commission 66/34).

The primary differences between the January staff recommendation and the WFWC action are mainstem tangle nets in spring (staff recommendation yes, WFWC no), conservation fishery emphasis (staff recommendation more, WFWC less), fall Chinook allocation (staff recommendation 70/30, WFWC 75/25 first two years and 80/20 after), and removal of fall mainstem gillnets after two years (staff recommendation no, WFWC yes).

The primary differences between the March staff recommendation and the current rules are the same differences noted above for the staff recommendation in January, with four exceptions. The March recommendation now retains the sport closure off Youngs Bay because it has not been an issue of non-concurrence in the past and aligns with current rules, adds more spring Chinook to off-channel areas to help improve commercial economics, includes an allocated conservation fishery targeting lower river hatchery fish if possible, and provides a reaffirmed emphasis on Commission support for improving survival of upriver wild and hatchery fish through the Federal Columbia River Power System.

The primary differences between the WFWC policy and current Oregon rules were described in the Background section above.

Modeling Updates

Several important updates have been made to the analyses provided in January. These include: updating the WFWC action beyond 2018 when mainstem gillnets are removed; a portrayal of how non-concurrent fishery allocations and gears will likely be implemented, and the likely economic impacts; an updated assessment of fisheries and associated economics if funding is lost; a range of possible economic outcomes for summer mainstem fisheries with alternative gears; and a modification to the assumption for the proportion of for-hire angler trips.

The percentage of ‘for hire’ angler trips was not known at the time of the January meeting, but by examining the number of anglers encountered per boat by creel clerks we were able to generate an approximate estimate of the number of guided angler trips per season/area, this number ranged between 5% and 14% of total angler trips (Table 1). We used the PFMC Astoria area multiplier of \$221.48/trip for all ‘for hire’ angler trips regardless of season or area. Remaining angler trips are estimated at \$65.35/trip, as in prior analyses.

Table 1—Summary of ‘for hire’ trip multipliers used in updated analysis.

Season/Fishery	% For Hire
Spring/LCR	5.4%
Summer/LCR	5.8%
Fall/Buoy 10	14 %
Fall/LCR	5.8%

Economic impacts associated with the WFWC Policy action presented to the OFWC in January were not calculated past 2018 because of the uncertainty of Washington actions after review of the next two years. We have updated the

WFWC policy analysis to include post 2018 out-years under the assumption that gillnets are removed and seines, both in a mark-selective fishery (MSF) and a non-mark-selective fishery, are substituted in.

Although not immediately accessible with existing gears, assuming there will be interest in accessing available commercial impact allocations, we now show the range of ex-vessel values associated with the summer Chinook allocation (\$0-\$88,000) rather than just assuming a zero value.

Updated analyses incorporating loss of funding authorized through SB830 (2013), codified at ORS 508.980, is based on Governor Brown's expressed concern that existing Columbia River reform rules "put at risk ongoing funding", Senator Girod's concern as one of the original sponsors of SB830 that "it will be difficult to sustain the \$4 million in general fund and Columbia River endorsement fees", as well as input from other legislative sponsors of SB830 (see Attachments 4, 6, 8 and 9).

If SB830 funds are eliminated in total, the most direct and immediate effect will be the reduction in approximately \$770K long term ex-vessel value associated with existing and enhanced off-channel production funded by these sources. Other reductions and related consequences include:

- Inability to meet current rule commitment for monitoring commercial mainstem fisheries in the fall (both gillnet and alternative gears).
- Inability to complete new off-channel site assessments for implementation.
- Reduced recreational monitoring in the lower Columbia and Willamette rivers and elimination of a new recreational creel program upstream of Bonneville Dam. A key component of the upstream creel study is to improve estimates of impacts to listed wild summer steelhead, particularly B-run steelhead.
- Reduced statistical rigor of Lower Columbia White Sturgeon population assessments to estimate abundance and understand population dynamics.

Model Outputs and Assessment of Options

Staff have represented outputs for various options in several ways. This includes assuming implementation without regard to non-concurrence and funding risks, as well as likely implementation incorporating non-concurrence and funding risks, based on staff's best professional judgement (Attachment 10).

In general, implementation without regard to non-concurrence and funding risks, continues to show that **current Oregon rules** provide the highest ex-vessel value, lowest number of angler trips, and highest overall personal income impacts. If likely effects of non-concurrence and funding risks are taken into account, then existing rules no longer provide the highest ex vessel value nor highest overall personal income impacts.

The **WFWC policy** provides the highest number of angling trips if non-concurrence is not factored in, but also the lowest ex-vessel value and overall personal income impacts long term. Considering the effects of non-concurrence, the WFWC policy has less angler trips than the March staff recommendation. Modifying Oregon rules to fully align with the WFWC policy would provide full

concurrence, but may likely result in loss of commercial economic benefits long term in a manner that does not enhance economic viability of fisheries or optimize overall economic benefits to the state.

The **March staff recommendation** provides more angler trips than current Oregon rules, but has slightly less ex-vessel value and overall personal income impacts than current rules if non-concurrence and funding risks are not considered. If non-concurrence and funding risks are taken into account, then the March staff recommendation provides higher angler trips, higher ex-vessel value, and higher overall personal income impacts long term than current rules. Conservation benefits are also highest for the March staff recommendation, assuming the conservation fishery is implemented. Other than adopting the WFWC policy, the March staff recommendation most effectively promotes orderly fisheries with Washington. The only substantive differences between the March staff recommendation and the WFWC policy is the limited spring mainstem tangle net fishery post run update, which staff believe is manageable and enforceable, and potential future differences if Washington removes mainstem gillnets in Zones 4-5 after two years – an action which ODFW staff does not support. The March staff recommendation also has the least risk to funding associated with SB830 necessary to implement CR Fisheries Reform.

Economic viability is most vulnerable when fish runs are low, a common threat in the Columbia Basin. The March staff recommendation, as a whole, maintains a portfolio of mainstem and off-channel opportunities for commercial fisheries that can enhance economic viability and provide some resilience when upriver runs are low. For example, if there was a decline in upriver runs like that observed in the 1990s, there would be little opportunity for commercial or recreational fishing in the mainstem, but off-channel fisheries could continue because very few ESA impacts are needed to harvest these hatchery fish.

Off-channel fisheries can also enhance hatchery efficiency for commercial fisheries. This is because off-channel fisheries have much higher harvest rates (>90%) of hatchery fish than mainstem commercial fisheries (<20%). As described in the January Commission briefing, hatchery spring Chinook and Coho smolts released in off-channel Select Areas are over 30 times more likely to be commercially harvested than hatchery smolts released from hatcheries farther upriver (but still below Bonneville Dam). Thus, maintaining off-channel releases enhances the efficiency of hatcheries supporting non-tribal commercial fisheries and can enhance commercial economic viability by providing some resilience to reductions in hatchery production or additional ESA constraints.

OPTIONS

1. No action
2. Adopt changes to OARs as shown in Attachment 3 (March staff recommendation)
3. Adopt WFWC Policy
Adopt changes to OARs as shown in Attachment 3 (March staff recommendation)

STAFF RECOMMENDATION

DRAFT MOTION

I move to adopt the amendments to OARs 635-500-6705 through -6735, 635-014-0090, 635-017-0090, and 635-023-0090 as shown in Attachment 3.

EFFECTIVE DATE

April 5, 2017