



# Oregon Fish and Wildlife Commission Minutes

Joint Meeting: January 10, 2008 1:00 p.m. Red Lion Inn at the Quay Centennial Room 100 Columbia Street Vancouver, Washington 98660	Reception: January 10, 2008 4:00 p.m. Red Lion Inn at the Quay Centennial Room 100 Columbia Street Vancouver, Washington 98660	Meeting: January 11, 2008 8:00 a.m. Oxford Suites Town Meeting Room 12226 N. Jantzen Dr. Portland, Oregon 97217
---	---	--

## *Minutes were approved at the Commission's February Commission Meeting*

Notice of these meetings had been made by press release of statewide media circulation. Those attending part or all of the meeting included:

Marla Rae, Chair	Carter Kerns, Commissioner
Dan Edge, Vice-Chair	Bobby Levy, Commissioner
Zane Smith, Commissioner	Roy Elicker, Director
Jon Englund, Commissioner	Laurie Byerly, Deputy Director
Skip Klarquist, Commissioner	Steve Sanders, Assistant Attorney General
Curt Melcher, Deputy Director	Casaria Tuttle, Executive Assistant
Bill Cook, Assistant Attorney General	

## **MEETING**

On Thursday, January 10, 2008 at 1:00 p.m., Washington Fish and Wildlife Commission Chair Jerry Gutzwiler called the joint meeting of the Washington and Oregon Fish and Wildlife Commissions to order.

The Commissions heard a presentation on Salmon Issues. The presentation focused on the 2008 preseason run forecasts; stakeholder process status; lower river HSRG recommendations and response and Mitchell Act funding.

The Commissions heard a presentation on predation issues. The presentation focused on California sea lions – Endangered Species Act and Section 120 petition.

The Commissions received status reports on spot prawns, sardines, crab and Blue Mountain elk.

The Commissions recognized Rollie Rousseau for his five decades of service to the states' natural resources.

## **MEETING**

On Friday, January 11, 2008 at 8:00 a.m., Chair Marla Rae called the Oregon Fish and Wildlife Commission (Commission) meeting to order.

## **DIRECTOR'S REPORT**

### **Field Reports (Written report is part of the Commission's official record.)**

#### *Northeast Region*

Craig Ely, Northeast Region Manager, reported on moose in the Wenaha unit.

#### *High Desert Region*

Chip Dale, High Desert Region Manager, reported on California bighorn sheep trapping and the East Beulah cougar target area.

#### *Northwest Region*

Chris Wheaton, Northwest Region Manager, reported on bears in Florence and the recent coastal storm.

#### *Southwest Region*

Steve Denney, Southwest Region manager, reported on a Coquille Tribe cooperative project, Jackson County dam issues and fall deer census.

#### *Ocean Salmon and Columbia River Program*

Tom Rein reported on behalf of Tony Nigro, Program Manager. Tom reported on the development of recommendations for Northwest Power Conservation Council Program amendments.

#### *Oregon State Police*

Walt Markee, Captain, Oregon State Police Fish and Wildlife Division, reported on a search warrant that revealed several deer heads and more and how forensics and citizens lead to a suspect.

#### *Conservation Strategy*

Holly Michael, Conservation Strategy Leader, updated the Commission on funding opportunities; the landowner incentive brochure and the staff introduction to Ecosystem Markets that was presented in early January.

#### *Information and Education*

Roger Fuhrman, Administrator, reported on the hunter education program and gave a review of the I&E program in 2007.

#### *Landowner Preference*

Craig Ely, Northeast Region Manager, returned to brief the Commission on the progress of the Landowner Preference program review in advance of the December 2009 sunset of the current program.

## **Adopt Temporary Rules**

Roy Elicker, Director, requested the Commission ratify the following temporary rules. The temporary rules were previously adopted by the director under his emergency action authority.

### **635-200-0090**

#### **Amend Rules Regarding the Sale of Domestic Elk Meat**

Adopted December 28, 2007; effective December 31, 2007 through May 29, 2008  
This amendment is needed to remove the reference to Oregon Laws 2001, Chapter 783, Section 2, which was adopted during the 2001 legislative session and will sunset on January 2, 2008. This rule amendment will authorize the sale of domestic elk meat after the sunset of the current statute. Although the current rule refers to a bill passed by the 2001 Legislative Assembly, the Commission has its own independent statutory authority to legalize sale of wildlife parts. This temporary rulemaking action would avoid consequences by relying on the Fish and Wildlife Commissions statutory authority to allow the sale of wildlife parts.

### **635-004-0019**

#### **In-season Actions Implemented by the Federal Government for Commercial Groundfish Fisheries**

Adopted December 10, 2007; effective December 11 through December 31, 2007  
Amended rule adopts in-season actions implemented by the federal government for commercial groundfish fisheries including changes to limited entry trawl sablefish trip limits and changes to the open access sablefish daily trip limit fishery.

### **635-005-0055**

#### **Commercial Fishing Vessels Allowed to Retrieve Derelict Ocean Dungeness Crab Gear In-season**

Adopted December 11, 2007; effective December 11 through June 7, 2008  
Amended rule specifies conditions under which commercial fishermen are allowed to retrieve derelict commercial ocean Dungeness crab fishing gear and transport it to shore. Commercial fishermen may retrieve up to six Dungeness crab pots not belonging to their vessel each fishing trip provided the pots are un-baited, no crab from these pots is retained and they document the activity in their logbook.

### **635-017-0095, 635-023-0095, 635-042-0130, 635-042-0135**

#### **Set 2008 Sturgeon and Smelt Seasons for the Columbia and Lower Willamette Rivers**

Adopted December 13, 2007; effective January 1 through June 28, 2008  
Amended rules set commercial fishing seasons for smelt and sturgeon in the Columbia River and the Willamette River downstream of Willamette Falls (including Multnomah Channel). Revisions are consistent with action taken December 13, 2007 by the Columbia River Compact.

**635-005-0055**

**Allow Early Replacement of Up to Ten Percent of Ocean Dungeness Crab Buoy Tags**

Adopted December 14, 2007; effective December 14 through June 7, 2008

Amended rule provides an earlier opportunity for commercial ocean Dungeness crab permit holders to obtain replacements for lost crab buoy tags up to ten percent of the tags initially issued to them. Upon receipt of a completed *Declaration of Loss*, the department will issue to the replacement tags as of December 14, 2007, about two weeks earlier than specified by permanent rule.

**635-004-0027**

**Harvest Quota Set for the 2008 Yaquina Bay Commercial Roe Herring Fishery**

Adopted December 26, 2007; effective January 1 through April 15, 2008

Amended rule to set the 2008 harvest quota for the Yaquina Bay commercial roe herring fishery, based on the available spawning biomass, as established in the *Yaquina Bay Basin Fish Management Operating Principles and Objectives* found in OAR 635-500-0665(2).

**635-017-0090**

**Sportfishing Season Opening Date for Carmen Reservoir Amended**

Adopted January 9, 2008; effective January 9 through July 6, 2008

Amended rule implements an earlier opening date for the 2008 recreational fishing season at Carmen Reservoir. The 2008 Oregon Sport Fishing Regulations, as adopted by the Oregon Fish and Wildlife Commission at their August 3, 2007 meeting, inadvertently set the season opening date as April 26, 2008. The recreational fishing season for Carmen Reservoir was intended to be open all year.

*OAR 635-006-0850, Removal of Flat Abalone from the Developmental Fisheries Species List, was removed from the list until the Commission discussed the abalone item during the January 11, 2008 Commission meeting in Exhibit C.*

**635-006-0850**

**Removal of Flat Abalone from the Developmental Fisheries Species List**

Adopted December 19, 2007; effective January 1 through January 31, 2008

Amend rules remove flat abalone from the developmental fisheries species list due to a trend of decreasing catch-per-unit of effort and concerns about sustainability of the commercial flat abalone fishery.

*Action:*

Chair Rae moved to ratify the temporary rules with the exception of 635-006-0850 related to flat abalone. Commissioner Edge seconded the motion, and the motion carried unanimously.

## **Expenditure Report:**

*Staff: Laurie Byerly, Deputy Director for Administration, presented the financial report for the month ending November 30, 2007.*

Chair Rae updated the Commission on the discussion to take place during the Commission's February 7 Big Think Meeting. The meeting will include a budget overview.

## **PUBLIC FORUM**

*Note: This part of the agenda is for comments on topics not scheduled elsewhere on the agenda. Please contact the Oregon Department of Fish and Wildlife Office of the Director at least 24 hours prior to the meeting to be included in the public forum. If you bring written summaries or other materials to the meeting please provide the Commission Assistant with 20 copies prior to your testimony. The Commission is unable to take action on items brought to their attention in this forum.*

No public testified during the public forum.

## **Exhibit A: COMMISSION MINUTES**

The Commission considered approval of the December 2007 Commission minutes.

### *Action:*

Commissioner Edge moved to approve the minutes as amended. Commissioner Smith seconded the motion and the motion carried unanimously.

## **Exhibit B: SCHEDULE OF DAMAGES FOR COMMERCIAL FISHING VIOLATIONS**

### *Staff Presentation:*

Christine Broniak, Economist, asked the Commission to approve the annual update of OAR 635-006-0232, Schedule of Damages for Commercial Fishing Violations.

### *Public Testimony:*

---

Thomas D. Ross  
1100 N. Buffalo St.  
Portland, Oregon

Mr. Ross was not present to testify.

---

### *Action:*

Commissioner Edge moved to amend the Schedule of Damages for Commercial Fishing Violations contained in OAR 635-006-0232 as proposed by staff in the revised Attachment 4. Commissioner Smith seconded the motion and the motion passed unanimously.

## Exhibit C: ANNUAL REVIEW AND RULEMAKING OF THE DEVELOPMENTAL FISHERY PROGRAM

Commissioner Englund declared a potential conflict of interest in that his business has the potential of doing business with those involved in developmental fisheries.

### *Staff Presentation:*

Brett Wiedoff, Nearshore and Developmental Fishery Project Leader, summarized the 2007 Developmental Fishery Program activities and updated Developmental Fishery Program administrative rules to reflect 2007 legislative actions consistent with Senate Bill 241 and set the 2008 Developmental Fisheries List per Legislative mandate.

### Public Testimony:

---

Jerome Grant  
Developmental Fisheries  
Board  
PO Box 411  
Siletz, Oregon 97380  
541-444-7405

Mr. Grant testified that he would like the Developmental Fisheries Board to work together with ODFW staff to explore the need to remove the abalone fishery. He asked the Commission to choose the status quo option presented by staff.

---

Kevin Hiersche  
Abalone Diver  
30375 Hillside Terrace  
Gold Beach, Oregon  
541-247-0454

Mr. Hiersche testified that he is the only abalone fisherman on the west coast. Mr. Hiersche acknowledged that the CPUE numbers have declined because of the structure of his harvest. His total CPUE for 2007 was 22.4 down slightly from the previous year. Mr. Hiersche feels the status quo option is acceptable. He would like the Developmental Fishery Permit Board to review the fishery.

---

Scott Rumsey, Ph.D.  
NOAA Fisheries  
1201 NE Lloyd Blvd. #1100  
Portland, Oregon 97232  
503-872-2791

Mr. Rumsey testified on behalf of National Marine Fisheries Service. Mr. Rumsey recommended the Commission close the fishery and to sponsor future fishery-independent surveys to monitor flat abalone aggregations on the southern Oregon coast.

---

Commissioner Kerns suggested a shoreline/nearshore strategy to manage fisheries such as the flat abalone fishery. Commissioner Kerns supported Mr. Hiersche's permit.

Commissioner Englund suggested a possible phase out process for the abalone fishery rather than ending the fishery immediately. When asked, Mr. Hiersche stated he could phase out his permit in the next two years.

Chair Rae supported staff's recommendation. She stated the developmental fisheries are experimental in nature.

### *Action:*

Commissioner Smith moved to continue the developmental fisheries program for flat abalone for an annual permit to a single permittee with the provision the take be limited

---

to 4 ¾ inches and 2,000 pounds and staff to designate no harvest zones at staffs' discretion to preserve sustainability and to revitalize the developmental fishery permit board. Commissioner Levy seconded the motion. The motion passed five in favor (Commissioners Levy, Englund, Kerns, Smith and Rae) and two opposed (Commissioners Klarquist and Edge).

Commissioner Smith would like "no harvest" areas created to reduce the risk of harm to the species. He would also like to establish a control area for comparison purposes. Commissioner Smith would like a NOAA representative on the developmental fishery board.

The Commission rescinded the portion of their earlier motion to designate no harvest zones because that portion of the motion was too broad. By adoption of the following motion, the previous action is superceded.

Chair Rae moved to adopt administrative rules as proposed by staff in Option 2 of Issue 1 to adopt the annual Developmental Fishery species list as status quo; and Option 1 of Issue 2 that require both a Dungeness crab permit and a Developmental Fishery permit to harvest box crabs. Commissioner Levy seconded the motion and the motion passed five in favor (Commissioners Levy, Englund, Kerns Smith and Rae) and two opposed (Commissioners Klarquist and Edge).

**Exhibit D: ADOPT RULES ESTABLISHING A NEW LIMITED ENTRY PERMIT RENEWAL DATE AND MODIFY RULES PER SENATE BILL 241 FOR THE THE SARDINE FISHERY**

Commissioner Englund declared a potential conflict of interest in that his business has dealings with the nearshore and developmental fisheries.

*Staff Presentation:*

Brett Wiedoff, Nearshore and Developmental Fishery Project Leader, presented proposed rules for amending the limited entry sardine permit renewal date and updated administrative rules to reflect 2007 legislative actions consistent with Senate Bill 241.

*Public Testimony:*

---

No public testimony

Revisions were made to attachment 6 page 8 for consistency: 635-006-1065 change the word "individuals" to "an individual"; on page 3 of 11 subsection 3(iii) after "permitted vessels" insert the words "during the year"; under option 2 the same replacement was made.

*Action:*

Commissioner Edge moved to affirm that the limited entry bay clam, brine shrimp and sardine fisheries are established under section (2) of Senate Bill 241, to adopt language as proposed by staff in Option 2 of Issue 1, including the modifications made by counsel

(to modify the sardine permit renewal date to December 31 of the permit year sought); and to transfer authority of the developmental fishery and limited entry sardine, bay clam and brine shrimp fishery permit appeals process to the Commercial Fishery Permit Review Board as shown in Attachment 6. Commissioner Smith seconded the motion and the motion passed unanimously.

### **Exhibit E: RESTORATION AND ENHANCEMENT PROJECT APPROVALS**

Commissioner Edge declared a potential conflict of interest in that he has faculty and students that would be funded by one or more projects.

*Staff Presentation:*

Laura Tesler, Restoration and Enhancement Program Coordinator, requested the Commission review and approve the Restoration and Enhancement Projects recommended by the Restoration and Enhancement Board at their November 12, 2007 meeting.

*Public Testimony:*

---

No public testimony

*Action:*

Commissioner Smith moved to approve the recommendations of the Fish Restoration and Enhancement Board. Commissioner Edge seconded the motion and the motion passed unanimously.

### **Exhibit F: RULES FOR APPOINTING AGENTS FOR BEAR AND COUGAR WORK**

*Staff Presentation:*

Don Whittaker, Bear and Cougar Program Coordinator, and Tom Thornton, Game Program Manager, requested the Commission adopt administrative rules for appointing agents for bear and cougar work.

Bill Cook, Assistant Attorney General, added language to the end of OAR 635-079-0005(3) to read "The Department will review any wildlife violations on the person's record (regardless of when convicted). The Department retains discretion to determine how many agents to appoint and which applications would best represent the state of Oregon."



Public Testimony:

---

Catherine Koehn  
40153 Little Fall Creek  
Fall Creek, Oregon

Ms. Koehn recommended an improvement to agency reporting forms including moving to computerized forms. Ms. Koehn requested a voluntary citizens' oversight committee be established to review the success of the program and do a cost analysis. Ms. Koehn would like to know if a citizen committee would be created.

---

Al Elkins/ Dave Walker  
Oregon Hunters  
Association  
30490 SW Rogue Lane  
#3112  
503-780-6824

Mr. Elkins testified in support of the rules and the additional language introduced by counsel during the meeting.

---

Stephanie Tidwell  
Klamath Siskiyou Wild  
PO Box 102  
Ashland, Oregon 97520  
541-488-5789

Ms. Tidwell testified on behalf of Klamath Siskiyou Wild in opposition of the cougar agent rules. Ms. Tidwell also supported comments to be made later in the meeting by the Sierra Club and the Humane Society of the United States.

---

Sally Mackler  
Sierra Club  
Jacksonville, OR  
541-846-6148

Ms. Mackler testified on behalf of the Sierra Club in opposition of the proposed rules. Ms. Mackler stated that agents should be available if they will be responding to damage and safety complaints. She continued, that if agents are responding to damage and safety the hounds should be inoculated and go through temperament testing.

---

Kelly Peterson  
Humane Society of the  
United States  
1414 SE 36<sup>th</sup>  
Portland, Oregon 97214  
503-230-0270

Ms. Peterson testified on behalf of the Humane Society of the United States regarding the federal penalty of animal abuse. Ms. Peterson recommended that any conviction preclude the applicant from being a wildlife agent.

---

Scott Beckstead  
Waldport, Oregon  
541-961-4609

Mr. Beckstead testified that any felony conviction should be grounds for immediate disqualification as well as any illegal take of wildlife. He further stated that agent applications should be a public record.

---

Jim Ince  
Rancher  
108 Mularera Rd.  
Azalea, Oregon 97410  
541-837-3636

Mr. Ince testified in opposition of the implementation of House Bill 2971.

---

Barbara Wilson  
Friends of Mt. Hood  
12820 SW 20<sup>th</sup> Ct.  
Beaverton, Oregon  
97008  
503-644-0762

Ms. Wilson testified on behalf of Friends of Mt. Hood that five years is not long enough to review a person's criminal background. Ms. Wilson wants a written list of criteria created that is not subjective, for a potential agent to qualify.

---

Commissioner Smith asked for assurance that the department would be held harmless from misconduct by agents.

Commissioner Smith asked for a cost analysis comparing the cost to ODFW for approximately 20 agents versus the cost to ODFW to have APHIS respond to damage and safety complaints. Ron Anglin, Wildlife Administrator, explained that the cost associated with volunteer agents is mainly existing staff time. Once the volunteer is trained, there is no additional cost except for the minimal time required for reporting. Wildlife Services is not always available to respond to a damage or safety complaint due to availability of staff. Commissioner Smith restated his concern over the cost of utilizing volunteers rather than already trained and established Wildlife Services agents. Ron Anglin explained how volunteer agents would be utilized; further explaining that ODFW staff will be alongside the volunteer agent when the agent is dispatched. Commissioner Smith would like further analysis with Wildlife Services on the cost. Ron Anglin explained that Wildlife Services thought they could handle the plan with two full time staff at an additional cost to ODFW of \$300,000 - \$400,000.

Commissioner Smith would like to see Oregon hunters be used in target areas to keep cougars at a sustainable level.

The Commission revised OAR 635-079-0005 subsections (2)(a), (d) and (e) with the addition of the words "or any" to read "...has not been convicted of any felony or any violation...".

The Commission discussed the amount of time to review an applicant's record. Commissioner Klarquist recommended striking "five years" from the draft rules and in addition to conviction being a disqualifier awaiting prosecution would also be included as a disqualifier. Chair Rae explained that Commissioner Klarquist's suggestion would require ODFW to use their professional judgement when approving a potential agent. The Commission was in agreement with Commissioner Klarquist's suggestion.

The Commission revised OAR 635-079-0005 subsections (b), (c), (d) and (e) to remove "in the last five years". The revised rule to read "Has not been convicted of..." The Commission revised OAR 635-079-0005 subsection (d) to remove "in the last five years". The revised rule to read "Has not had their..."

The Commission revised OAR 635-079-0005 by moving subsection (i) in between subsections (e) and (f) then renumbered subsections for consistency.

The Commission inserted counsel's addition "The Department will review any violations on the person's record. The Department retains discretion to determine how many agents to appoint and which applicants would best represent the state of Oregon." to the end of OAR 635-079-0005(3). Each sentence would be a separate bullet.

The Commission revised OAR 635-079-0010 subsection (d) to read "promptly inform his/her Department supervisor of any change in status..." removing the words "arrest or violation of the felony... Upon notification..." Legal Counsel and staff were directed to

work out appropriate language and bring that language back to the Commission for their February 8, 2008 meeting.

The Commission revised OAR 635-079-0010 subsection (e) to remove the word “purposely” to read “the Wildlife Division of the Department determines the individual has violated the wildlife laws;...” The word “the” was removed to read “...if the person is convicted of a felony or any violation of animal cruelty ...”.

The Commission revised OAR 635-079-0010 subsection (f) to remove the words “conducts oneself in a manner” to read “...or engages in conduct that reflects poorly on the Department;”

The Commission revised OAR 635-079-0010 subsection (7) to change the word “terminates” to “terminate”.

The Commission further revised OAR 635-079-0010 subsection (e) adding the words “the person” to the second line to read “...laws; the person is convicted of any...”.

The Commission further revised OAR 635-079-0005 subsection (2)(d) to change the word “their” to “his or her” to read “...has not had his or her hunting or fishing license...”. The same revision was made to subsection (1)(f) to change the word “their” to “his or her” to read “a current certified copy of his or her motor vehicle records; and”.

The Commission added a subsection to OAR 635-079-0005 to include a requirement for current canine immunization records.

*Action:*

Chair Rae moved to direct staff to prepare final rule amendments implementing Commission changes identified at the January 11 meeting and bring the rules to the Commission for adoption at the February 8 meeting. Commissioner Edge seconded the motion and the motion passed unanimously.

The public record, after the January 11, 2008 meeting, closed on division 079 rules pertaining to the implementation of House Bill 2179.

**Exhibit G: WILDLIFE ARE PLANNING UPDATE – KLAMATH WILDLIFE AREA AND LADD MARSH WILDLIFE AREA**

*Staff Presentation:*

Nancy Breuner, Habitat Biologist, Lanny Fujishin, Klamath Wildlife Area Manager, and Dave Larson, Ladd Marsh Wildlife Area Manager, briefed the Commission on the draft Wildlife Area Plans for Klamath Wildlife Area and Ladd Marsh Wildlife Area.

Public Testimony:

No public testimony

Commissioner Smith would like to see more information on private, public and government partnerships as well as partnerships with other states and discussion of the future of land adjustments and water.

*Action:*

No action, informational briefing only.

**Adjournment**

Chair Marla Rae adjourned the meeting at 4:53 p.m.