



## Oregon Fish and Wildlife Commission Minutes

Tour:  
May 8, 2008 8:00 a.m.

Reception:  
May 8, 2008 5:30 p.m.  
Blue Mountain Conference  
Center  
404 Twelfth Street  
La Grande, Oregon 97850

Meeting:  
May 9, 2008 8:00 a.m.  
Blue Mountain Conference  
Center  
404 Twelfth Street  
La Grande, Oregon 97850

### *Minutes were approved at the Commission's June 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  
Zane Smith, Commissioner  
Jon Englund, Commissioner  
Carter Kerns, Commissioner  
Skip Klarquist, Commissioner

Bobby Levy, Commissioner  
Bill Cook, Assistant Attorney General  
Curt Melcher, Deputy Director  
Liz Bueffel, Administrative Support Manager

On Thursday, May 8, 2008 the Oregon Fish and Wildlife Commission toured Starkey Research Area. At Starkey the group discussed the history, the start of the project in the 1980's, the traffic study and the predation/nutrition study. The group then went to the elk holding facility to discuss scale, landmarks, ATV study, herbivory study, archery study and fuel reduction.

The Commission then traveled to Ladd Marsh Wildlife Area to discuss the Elkhorn Wind Project, Grande Ronde Model Watershed and the Ladd Marsh Wetland Creation.

The Commission held a public reception at the Blue Mountain Conference Center on May 8, 2008, at 5:30 p.m.

On Friday, May 9, 2008, at 8:03 a.m., Chair Marla Rae convened the Oregon Fish and Wildlife Commission (Commission). Commissioner Edge was excused from the meeting.

### **DIRECTOR'S REPORT**

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

#### Northeast Region

Craig Ely, Northeast Region Manager, reported on the Aldrich Mountain closure in the Murderer's Creek Unit as well as limited hunter access in the Malheur National Forest.

#### High Desert Region

Chip Dale, High Desert Region Manager, reported on the opening weekend of fishing season in Central Oregon. He also reported on steelhead fry releases above the Pelton Round Butte Hydroelectric project.

#### Northwest Region

Chris Wheaton, Northwest Region Manager, reported on the 2007 bald eagle nest survey, Chinook fry outmigrant numbers for the Little North Fork Wilson River and the Siletz water development.

#### Southwest Region

Steve Denney, Southwest Region Manager, reported on Rock Creek Outdoor Conservation Education and Rogue District wildlife damage complaints.

#### Ocean Salmon and Columbia River Program

Bruce McIntosh, Fish Division Deputy Administrator, updated the Commission on white sturgeon tagging activities.

#### Information and Education

Rick Hargrave, Information Manager, reported on the California sea lion trapping activities.

#### Conservation Strategy

Holly Michael, Conservation Strategy Leader, updated the Commission on Conservation Strategy efforts, including plant species.

#### Oregon State Police

Walt Markee, Captain, Oregon State Police Fish and Wildlife Division, reported on a multi-state investigation dubbed "Operation Fish and Chips". Numerous fish dealer checks were conducted.

#### **Coastal Coho Conservation Update**

Bruce McIntosh, Fish Division Deputy Administrator, updated the Commission on the Coastal Coho Conservation plan.

#### **Blue Mountain Elk Initiative**

Mark Henjum, Blue Mountain Elk Initiative Coordinator, gave a history on the Blue Mountain Elk Initiative (BMEI). BMEI was formed in 1990 and is a cooperative partnership to manage elk and habitat in the Blue Mountains.

#### **Adopt Temporary Rules**

Curt Melcher, Deputy Director for Natural Resources, requested the Commission ratify the following six temporary rules. The temporary rules were previously adopted by the director under his emergency action authority.

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

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

Adopted April 23, 2008; effective May 1 through October 27, 2008  
Amended rule adopts the in-season actions implemented by the National Oceanic and Atmospheric Administration (NOAA) for commercial fisheries including: adjustments government the limited entry non-whiting trawl fishery, including changes to trip limits and Rockfish Conservation Area (RCA) boundaries; and trip limit adjustments to the open access sablefish daily trip limit fishery north of 36 degrees N.

**635-023-0134**

**Open Spring Chinook Sport Fishery on the Snake River Below Hells Canyon Dam**

Adopted April 24, 2008; effective April 26 through July 20, 2008  
Amended rule opens a hatchery spring Chinook fishery from the Dug Bar Boat Ramp upstream to the deadline below Hells Canyon Dam on the Snake River beginning April 26, 2008 to coincide with the state of Idaho's regulations for this fishery.

**635-042-0170**

**Commercial Gill Net Spring Salmon Fisheries for Tongue Point Basin and South Channel Select Areas**

Adopted April 24, 2008; effective April 28 through October 24, 2008  
Amended rule implements the commercial gill net spring salmon season in the Tongue Point Basin and South Channel Select Areas and allows retention and sales of salmon, white sturgeon and shad. Revisions are consistent with action taken April 24, 2008 by the Columbia River Compact agencies of Oregon and Washington.

**635-041-0176**

**Allowable Sales of Fish Caught During Columbia River Treaty Tribal Spring-Summer Salmon Fisheries**

Adopted May 1, 2008; effective May 5 through July 31, 2008  
Amended rule allows sales of fish caught in Treaty Tribal spring Chinook salmon fisheries in the Columbia River mainstem and Washington tributaries beginning May 5, 2008. Allowable sales include Chinook salmon, steelhead, walleye, carp, shad and fish caught in Yakama Nation tributary fisheries in the Klickitat River, Wind River, Drano Lake/Little White Salmon River and Big White Salmon River during those days and hours when the tributaries are open under lawfully enacted tribal fishing periods. Revisions are consistent with action taken May 1, 2008 by the Columbia River Compact agencies of Oregon and Washington.

**635-051-0048**

**Take of Wild Birds Including Nests and Eggs**

Adopted April 21, 2008; effective April 21 through October 17, 2008  
Allow the continuation of control methods currently allowed under Federal permits for all migratory birds and to implement the Nest and Egg Depredation Order for resident Canada geese. The department may allow the destruction of nests and/or eggs by authorized federal agencies and their permittees for the purposes of public health and safety, nuisance and depredation control.

**635-017-0090**

**Inclusions and Modifications**

Adopted May 8, 2008; effective May 12 through July 29, 2008

Close the recreational fishery in the Willamette River below the Willamette Falls, including the Multnomah Channel, to retention of spring Chinook salmon. Steelhead, shad and other species will remain open, as will Chinook retention above Willamette Falls and in the Clackamas River, with previously adopted seasons and bag limits still in effect.

*Action:*

Commissioner Smith moved to ratify the temporary rules. Commissioner Levy seconded the motion, and the motion carried unanimously.

Revisions were made to OAR 635-017-0090 to reflect the original intent of the temporary rule. A revised temporary rule was provided with the correct language.

Commission Smith moved to rescind the temporary rule motion for 635-017-0090. Commission Levy seconded the motion and the motion carried unanimously.

Commissioner Smith moved to ratify the temporary rule 635-017-0090. Commissioner Levy seconded the motion, and the motion carried unanimously.

**Expenditure Report:**

Laurie Byerly, Deputy Director for Administration, presented the financial report for the month ended March 31, 2008. She also gave an update on the 2009-11 budget process.

Chair Rae provided some of the comments received from the Town Hall meetings around the state.

**PUBLIC FORUM**

*Note: This part of the agenda is for comments on topics not scheduled elsewhere on the agenda. The Commission is unable to take action on items brought to their attention in this forum.*

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Ben Boswell Wallowa County Commissioner	Mr. Boswell provided comments regarding turkey populations in Wallowa County. He also provided the Commission with another copy of his minority report for the Draft Wolf Conservation and Management Plan from October 2004. He reviewed it to see if he would change anything and he stated he would not. Mr. Boswell also provided what he considers to be the management objectives for predators. He would like the department to distribute more information on wolves.
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**Exhibit A: COMMISSION MINUTES**

The Commission considered approval of the April 2008 Commission minutes.

*Action:*

Commissioner Smith moved to approve the minutes of April 17 and 18 as amended. Commissioner Kerns seconded the motion and the motion carried unanimously.

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

### *Staff Presentation:*

Laura Tesler, Restoration and Enhancement Program Coordinator, asked the Commission to review and approve 19 Restoration and Enhancement (R&E) projects recommended by the R&E Board at their February 29, 2008 meeting.

Commissioner Smith inquired about the cost of the bathrooms at Bowman pond. He had concern about the cost and felt there must be a better way to construct a toilet.

Laura Tesler provided the Commission with information on bathroom units and prices. She also reported that the landowner has been very generous in the past allowing disabled groups and senior citizens to visit the site and felt the project was worth the price for access it provides.

Commissioner Smith inquired about the suggestion the Board had for a local fee for the sea lion deterrent project.

Laura Tesler reported that she looked into the possible fee for the boat ramp. It is a SFR funded boat ramp so a fee cannot be charged. Steve Denney added that a different method may be used such as a hotel tax or port charges to help defray the cost.

Commissioner Smith asked about the Salem 4-H pond aerator project. He felt the project was marginal and asked for highlights of the benefits.

Laura Tesler reported that it is a warm water fishery program and there are lots of fishing events through the 4-H program. It was felt the project would give another component to a kid's fishery.

Chair Rae expressed continued concern on unpredictable money being used to fund positions that the department needs.

Commissioner Kerns expressed his support for the land purchase along the Grand Ronde River.

### *Public Testimony:*

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No members of the public were present to testify

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### *Action:*

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

**Exhibit C: KLAMATH BASIN FISH MANAGEMENT PLAN BRIEFING**

*Staff Presentation:*

Chip Dale, High Desert Region Manger and Roger Smith, District Fish Biologist for the Klamath Watershed District, briefed the Commission on proposed amendments to introduce anadromous fish to the upper Klamath Basin.

Public Testimony:

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Joe Kirk (Klamath Tribes) Chiloquin, OR	Mr. Kirk is the Chairman for the Klamath Tribes. He reported that salmon have been gone from his homeland for almost 100 years. They are trying to bring fisheries back and he believes they will come back. He would like to see the Commission approve the Plan.
John Hamilton (USFWS) Yreka, CA	Mr. Hamilton provided U.S. Fish and Wildlife’s comments on the proposed Plan. He provided historical information and appreciated ODFW’s efforts. He looks forward to working together as partners to restore anadromous fish to the area.

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Commissioner Smith complimented everyone on their remarkable efforts.

Commissioner Kerns echoed Commissioner Smith’s comments and is pleased to see the Plan.

Commissioner Englund stated that he is delighted to see the Plan. He went over his concerns with portions of the Plan and stated he endorsed it.

Deputy Melcher reported that the issues will be difficult and every solution comes with problems but the department will work through them. He felt the department is taking a good approach and it is very exciting.

*Action:*

No Commission action at this time. Specific proposed rulemaking shall be presented in July 2008.

**Exhibit D: LANDOWNER PREFERENCE BRIEFING**

*Staff Presentation:*

Craig Ely, Northeast Region Manager, and Steve Denney, Southwest Region Manager, briefed the Commission on potential changes to the Landowner Preference Program (LOP).

Chair Rae, Commissioner Levy and Commissioner Kerns declared a potential conflict of interest. They and/or their family members participate in the Landowner Preference Program. Commissioner Levy is also related to a member of the LOP review committee.

Public Testimony:

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Steve Mathers Bend, OR	Mr. Mathers recommended to adopt the recommendations from the committee. He would like to see landowners given much more flexibility to use the tags.
George Houston Sandy, OR	Mr. Houston served on the LOP review committee. He felt the program is well balanced. He would like the Commission to look at the original intent of the program and gather a vision for future. He would like the department to try to balance the issues and make partnerships work.
Gordon Larson Canyon City, OR	Mr. Larson stated that it is the landowner that will be affected by changes. He supports the bulk of the recommendations except the increase in acreage from 160 to 640. He feels it will impact smaller landowners like him.
Jim Welsh Elmira, OR	Mr. Welsh represents the Oregon Cattleman's Association. He felt compensation is needed for the loss of livestock. Mr. Welsh went over portions of the staff recommendations that he supported. He would like to see the sunset extended for five years, review the program then and then place another sunset.
Steven Hammond Diamond, OR	Mr. Hammond served on LOP review committee and represents the Oregon Farm Bureau. He supported a review of the program every five years. He felt department staff needs to help the committee through that. He utilizes the LOP program and is still learning things. He feels there is no reasoning behind the issue regarding transferring of tags.
Bob Webber Central Point, OR	Mr. Webber also served on the LOP review committee. He supported the staff options. He felt a five year review might be too quick and that ten years may be better. Mr. Webber felt that if all tags were transferable it would decrease hunter access to private lands because it would exclude the public. The program was designed for property owners to hunt on their own property. He would support a damage program that can prove damage. The program would have to deal with specific identifiable damage with individual landowners. Solutions could entail hazing, special hunts, fencing, etc.

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Steve Corey  
Pendleton, OR

Mr. Corey served on the LOP committee. He spoke on behalf of the Cunningham Sheep Company. He provided the Commission with a request for a special drawing in certain units for landowners to draw bull elk tags. This would be a special drawing that would occur only in the LOP limited draw units.

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Chair Rae noted the comments received from Mike Dykzeul, Oregon Forest Industry Council.

Staff reported there are currently 6,379 landowners currently registered in the landowner preference program. Deanna Erickson gave a briefing on the limited landowner draw which started in 2000.

Commissioner Smith inquired about if rules were adopted regarding a charity issue how would the landowner determine the value for tax purposes. It was determined that the amount would probably be very small since the actual cost of the tag is minimal.

Commissioner Smith inquired about the requirement for damage tags. Craig Ely explained the tag exchange process for damage. This process came about in the 1990's. Tag exchanges for damage can occur between August 1 and March 31.

Administrative rules regarding the issues discussed will be brought forward in October for proposed adoption.

*Action:*

The Commission discussed the internal actions provided by staff and agreed with the actions provided.

The Commission discussed the potential administrative rule changes that would be implemented in 2009. They agreed with the recommendations but would like more ideas brought forward in October regarding the drawing process for acreage larger than 20,000.

The Commission discussed the acreage proposal changing the minimum acreage requirement for deer and elk from 160 to 640. This would affect 1,079 landowners. Staff will provide the Commission with a range of options when they bring this issue forward in October for proposed adoption.

The Commission discussed the proposed legislative actions. They supported to extend the sunset an additional 15 years and have an internal review at least every five years. The majority of the Commission supported the harvest of buck antelope under the Landowner Preference Program. The Commission supported to add "spouse and domestic partner" to the definition of "immediate family" and the majority supported to allow up to 50 percent of the tags to go to anyone the landowner chooses. Numbers will be rounded up for odd numbered tags.

The Commission supported staff to work with Legislative Counsel to develop a pilot program for landowners who provide hunter access.

### **Lunch Award Presentation**

Craig Ely, Northeast Region Manager, presented an award of appreciation to Mr. Bill Brown. Mr. Brown was the first Region Supervisor in the Northeast Region. Mr. Brown recently donated \$4,000 to ODFW to build an informational kiosk at Ladd Marsh Wildlife Area. Mr. Brown and his family were present for the award.

### **Exhibit E: CERVID RULE ADOPTION**

#### *Staff Presentation:*

Bruce Eddy, Grande Ronde Watershed Manager, asked the Commission to adopt Oregon Administrative Rules related to Cervid Propagation.

Chair Rae went over the issues that were before the Commission for the cervid rule proposed adoption.

Bill Cook explained to the Commission that the law requires to keep the impact of small businesses in consideration when writing the rules. If there is an economic impact on small businesses, changes in the rules would need to be made that would ease the impact on small businesses.

The Commission reviewed the proposed Oregon Administrative Rules related to cervids:

#### Exports, 635-049-0025(6):

Commissioner Smith agreed with the export rules but had concern for those licensees who want to dispose of their license. He stated that the Commission might need to broaden the rules for this situation because it may be difficult for the licensee to market their bulls in this case. An option for this may be adding a grace period before implementation.

Commissioner Englund stated that he is concerned about financial effect of the issue and also concerned about the knowing sale of shooter bulls. He yielded to endorse the rules even though it is a stretch. He agreed with Commissioner Smith's comments that it may make it difficult for those who want to get out of the business.

Commissioner Kerns agreed with Commissioner Englund's comments.

The majority of the Commission agreed to leave the language as proposed.

#### Lottery versus merit process, 635-049-0175:

There was concern over the Commission's direction from the last meeting in regards to when a license becomes available and how that license is offered to another individual. The previous direction from the Commission was to issue these new licenses based on merit and not to go through a lottery process. Chair Rae felt that the information provided by the applicant when they first apply is what they were trying to achieve

through the merit process. She discussed options for the lottery process for new licenses.

Commissioner Smith still supported the merit process but agreed that the department should not issue a written test. He felt that the department should solicit applications similar to a Request for Proposal (RFP). The RFP would prescribe the minimum conditions in which the department would issue a permit. The permittee can elaborate on how they can meet the conditions on security, disease control, etc. Then, the selection for the license would be based on a judgment call. Commissioner Smith is okay with the lottery draw but would prefer the merit process.

Changes would need to be made to 635-049-0185 if a lottery process would be put in place.

Fencing, 635-049-0245:

Colin Gillin reported on his findings on fencing for cervids. He discussed the different options for fencing requirements, including single woven wire fencing and double woven wire fencing.

Chair Rae reminded the Commission that the fencing rules discussed apply to existing licensees. New or transferred licenses would be required to be double fenced.

Commissioner Klarquist supported the recommendations regarding fencing. He commented on Representative Whisnant letter in which he suggested working with the Legislature on financial help for double fencing and to postpone the effective date for a year.

Commissioner Englund reported he is against double fencing because of the cost. He believes there is a bigger concern of disease coming into the ranch than disease coming out of the ranch. He is now leaning toward double fencing after listening to the testimony from last month. He would like to see a phase in time of at least three years and a cost share program to assist with the price. He agreed that new operations should be double fenced. He also believed that a person buying a transfer license should be grandfathered in and have a three year grace period to be double fenced.

Chair Rae reported that the cost share would be for existing licenses only. Existing type 1 licensee would not be required to double fence unless there was detected disease that we are concerned about in one of their animals. Transferred and new licenses would be required to be double fencing, even if it's an existing facility. Partners would be sought to help fund double fencing for existing operations when necessary. Administrative rules or policy would need to be adopted in the future to implement cost sharing.

Implementation dates/grace periods:

Commissioner Kerns would like to see grace period for all the issues that would go through the next legislative session.

Chair Rae did not support all the issues being put on a grace period through the next legislative session because some issue could be dealt with immediately. The process of a surveillance list, testing and reporting, genetics, etc. can be done immediately because they would not require legislative action. The only one that is dependent on legislative action is cost sharing for double fencing for existing operations.

Ron Anglin had concern with the timeframe for marking requirements for cervids. This might not physically be able to be done within the next few months, specifically for bulls, so he suggested a delayed implementation date so it would not cause harm to their animals.

The Commission made amendments to the proposed Division 049 in regards to the lottery process, fencing requirements and implementation/phase in process along with some wordsmithing changes.

Commissioner Kerns and Commissioner Smith continue to favor merit over a lottery process for available elk licenses for commercial or exhibition purposes.

Commissioner Klarquist and Commissioner Kerns were not in favor of taking the wording out in lines 443-447 in 635-049-0245(2)(b) in regards to fencing requirements.

Bill Cook stated that the law requires that the Commission make changes to rules to ease the economic impact on small businesses. He identified two ways the rules have eased the economic impact on small businesses; (1) implemented a less costly alternative for fencing because it is scaled back from the original recommendation and (2) simplified the compliance requirements in that cervid marking requirements have been simplified and phased in.

Public Testimony: No public testimony on the cervid rule adoption was taken.

*Action:*

Chair Rae moved to adopt the amendments to Oregon Administrative Rule 635 Divisions 045 and 049 as proposed by staff and amended by the Commission on May 9, 2008. Commissioner Smith seconded the motion and the motion passed with a 5-1 vote. Commissioner Klarquist opposed to the motion and Commissioner Edge was excused.

The Department will work towards a cost sharing program to help the existing cervid licensees with double fencing.

Chair Rae stated that there is an expectation that these regulations will be strictly enforced.

Chair Rae would like staff to look into the repeated statement regarding CWD resistant herds. It is not known if it is possible to have that claim without having one of the animals exposed to CWD. Staff will follow up to prove or deny the statement and report back to the Commission.

**Adjournment**

Chair Marla Rae adjourned the meeting at 4:26 p.m.