



1 updated the Commission on artificial redds. Fish biologists constructed salmon redds  
2 with rakes on the McKenzie River above Trail Bridge Reservoir and in the Middle Fork  
3 Willamette above Hills Creek Reservoir. Chris thanked the Commission and staff on  
4 behalf of Steve Mamoyac and family for their thoughts and prayers during the search for  
5 their son, Derek who was lost on Mt. Adams. He was found alive after nearly a week.  
6 Chair Rae praised the efforts of Chris, Linda Lytle and other staff.

#### 7 8 Southwest Region

9 Steve Denney, Southwest Region Manager, reported on the Gold Ray Dam removal  
10 project. He also gave an update on the South Coast Fall Chinook Conservation Plan.  
11 Staff will begin to work on this Plan as part of the Native Fish Conservation Plan.

#### 12 13 Ocean Salmon and Columbia River Program

14 Tony Nigro, Program Manager, gave an update on the status of the White Sturgeon  
15 Conservation Plan. In July 2008, the department began work on the conservation plan  
16 for white sturgeon in the Columbia River downstream from Bonneville Dam. Department  
17 staff are currently in the process of establishing technical and policy advisory  
18 committees.

#### 19 20 Information and Education

21 Roger Fuhrman, Information and Education Administrator, gave an update on the  
22 mentored youth hunter program. He reported on *License Dollars at Work*, a new feature  
23 available on the ODFW website. This highlights some of the ODFW projects that benefit  
24 Oregon's fish and wildlife. Roger also reported on a successful direct mail marketing  
25 campaign targeting lapsed anglers.

#### 26 27 Conservation Strategy

28 Holly Michael, Conservation Strategy Leader, gave an update on the Oregon  
29 Conservation Strategy efforts. Holly represented ODFW at the National Conference of  
30 The Wildlife Society. The second round of Oregon 150 grant distributions, co-sponsored  
31 by ODFW and Oregon Watershed Enhancement Board, have been announced. These  
32 grants focus on species in Oregon with Conservation Strategy focused projects and  
33 research. She gave some examples of these projects. Holly recognized department  
34 staff for their efforts with the Wind Energy and Wildlife Workshop last week in The  
35 Dalles.

#### 36 37 **Wild Salmon Center Memorandum of Understanding Briefing:**

38  
39 Bruce McIntosh, Fish Division Deputy Administrator for Inland Fisheries, reported on the  
40 North American Salmon Stronghold partnership. The partnership consists of many  
41 state, federal, tribal and Canadian entities along the west coast. There are also many  
42 non-governmental organizations involved. The purpose of the partnership is to  
43 accelerate protection of salmon strongholds by providing the leadership to identify  
44 salmon strongholds, gather information on potential treats, support local efforts to  
45 address them and to share lessons learned around the Region. A legislative bill has  
46 been introduced for funding and action is expected within the next year.

1 Commissioner Smith asked what the principle threats to the strongholds were.

2  
3 Bruce replied that a lot of time it is development in the lowlands. It is typically around the  
4 land use issues.

5  
6 **Expenditure Report:**

7  
8 *Staff Presentation:*

9  
10 Tom Ruddiman, Deputy Director for Administration, gave an update on the financial  
11 statement for the period ending September 30, 2008. Department-wide, the revenue  
12 and expenditures are within budgeted projections.

13  
14 Tom also gave an update for the 2009-11 budget development. The Agency Request  
15 Budget document was submitted in September. The appeals have been completed.  
16 Final information from the Department of Administrative Services, Budget and  
17 Management (BAM) section should be received next week.

18  
19 Commissioner Edge asked if the Policy Option Packages and fee increase are still  
20 being considered. Tom responded that he believed they are. He has not heard any  
21 objections from BAM at this point. A more detailed report on the budget will be given at  
22 the December Commission meeting after the budget forecast comes out.

23  
24 **Adopt Temporary Rules**

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

28  
29 **635-042-0060**

30 **Columbia River Late Fall Commercial Gill Net Chinook Salmon Season Extended**

31 Adopted October 14, 2008; effective October 15, 2008 through December 31, 2008.  
32 Amended rule implemented three new fishing periods in the Columbia River for the  
33 commercial harvest, retention and sales of Chinook salmon and white sturgeon in zones  
34 1 thru 3 (upstream to the Longview, Washington Bridge) and all of zones 4 thru 5  
35 beginning October 15, 2008. The proposed fisheries provide commercial gill netters the  
36 opportunity to harvest part of their pre-season allocation. Revisions were consistent  
37 with action taken October 14, 2008 by the Columbia River Compact agencies of Oregon  
38 and Washington.

39  
40 **635-041-0075**

41 **Treaty Indian Fall Salmon Season In the Columbia River and Tributaries Extended**

42 Adopted October 16, 2008; effective October 17, 2008 through October 31, 2008.  
43 Amended rule added a 3.5 day (84 hours) fishing period onto the Tribal Indian fall  
44 commercial gill net salmon season in the Columbia River and tributaries. This new  
45 fishing period began at 6:00 a.m. Monday, October 20, 2008 and extended through 6:00  
46 p.m. Thursday, October 23, 2008. Revisions were consistent with action taken October  
47 16, 2008 by the Columbia River Compact agencies of Oregon and Washington in  
48 concert with the Columbia River Inter-Tribal Fish Commission.

1 **635-005-0020**

2 **Tillamook Bay Commercial Cockle Clam Dive Fishery Closure**

3 Adopted October 17, 2008; effective October 18, 2008 through December 31, 2008.  
4 Amended rule closed the commercial Tillamook Bay clam dive fishery for cockle clams  
5 at 12:01 a.m. Saturday, October 18, 2008 due to attainment of the 90,000 pound annual  
6 harvest quota, under bay clam dive permits. Revisions were consistent with  
7 requirements of OAR 635-005-0032 sections (2) and (3).  
8

9 **635-042-0060**

10 **Columbia River Late Fall Non-Indian Commercial Gill Net Season Is Extended**

11 Adopted October 21, 2008; effective October 21, 2008 through December 31, 2008.  
12 Amended rule implemented five new 12-hour fishing periods in Columbia River zones 4  
13 and 5 and two new 12-hour fishing periods in Columbia River zones 1 and 3 (upstream  
14 to the Longview, Washington Bridge) for the commercial harvest, retention and sales of  
15 salmon and white sturgeon beginning October 21, 2008. The proposed fisheries  
16 provided commercial fishers the opportunity to harvest most of their remaining  
17 allocation. Revisions were consistent with action taken October 21, 2008 by the  
18 Columbia River Compact agencies of Oregon and Washington.  
19

20 **635-016-0090**

21 **Modifications to Southwest Zone Sport Chinook Salmon Regulations for the  
22 Chetco and Winchuck Rivers**

23 Adopted October 28, 2008; effective November 1, 2008 through November 30, 2008.  
24 Amended rule extended the closure on the mainstem upstream of river mile 3, in an  
25 effort to maximize the spawning escapement of fall Chinook in the Chetco and  
26 Winchuck rivers, while continuing to allow limited opportunity for harvest of fall Chinook  
27 in the Chetco Estuary.  
28

29 **635-016-0090**

30 **Modifications to Southwest Zone Sport Chinook Salmon Regulations for the  
31 Chetco and Winchuck Rivers**

32 Adopted November 4, 2008; effective November 5, 2008 through December 31, 2008.  
33 Amended rule implemented open season dates for Chinook salmon sport angling,  
34 allowing opportunity to harvest fall Chinook in the Chetco and Winchuck rivers.  
35

36 **635-041-0075**

37 **Treaty Indian Late Fall Salmon Season In the Columbia River and Tributaries**

38 Adopted November 10, 2008; effective November 12, 2008 through November 30,  
39 2008.  
40 Amended rule suspended commercial sales of fish caught after 6:00 p.m. on  
41 Wednesday, November 12, 2008 in the Tribal Indian fall commercial platform and hook-  
42 and-line fisheries in the Columbia River and tributaries above Bonneville Dam.  
43 Revisions were consistent with action taken November 10, 2008 by the Columbia River  
44 Compact agencies of Oregon and Washington in concert with the Columbia River Inter-  
45 Tribal Fish Commission.  
46

47 *Action:*

48 Commissioner Edge moved to ratify the temporary rules. Commissioner Smith  
49 seconded the motion and the motion carried unanimously.  
50

51 **PUBLIC FORUM**

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

1 *this forum.*  
2

---

Paula Walker and Rebecca Hoyt  
Lewis and Clark Law School

Paula Walker reported that she is representing C-pod, which is made up of a group of law students who formed the coalition to take grass roots action in Oregon to protect ocean diversity. She talked about the problem facing the shark populations world-wide. Current populations are estimated to be about 20 percent of their normal status. It is estimated that at the current rate of take most shark populations will be driven to extinction within 10 years. There is a high demand for shark fins for shark fin soup. This is largely supplied by illegal fishing which is unregulated. There are also other demands for shark products. The coalition is looking to the Commission to provide potential help and guidance.

Cyreis Schmitt, Policy Project Leader for Marine Resources Program, reported that shark finning is prohibited in Pacific Ocean so there is no legal shark finning taking place. There are international fishery commissions that deal with the international waters.

Commissioner Edge asked what authority the Commission has that would prohibit the sale of shark fins.

Steve Sanders replied that the Commission's authority focuses on the take in state waters. He felt the Commission has taken the steps that it is authorized to do with respect to controlling the take aspect of it. Next month, the Commission will hear further restrictions related to the take of sharks in state waters. The Commission does not have control on what is served in restaurants.

Commissioner Smith asked if it is reasonable to ask the Attorney General to look into this.

Mr. Sanders replied that it could be fruitful in developing state authority over these practices.

Chair Rae said the department will look into this and see what is possible.

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Bruce Polley

Mr. Polley spoke on behalf of the Coastal

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Coastal Conservation Association  
Oregon

Conservation Association (CCA) of Oregon. He reported that the members are committed to ending the over-harvest and non-selective harvest of wild fish, and increasing the efficient harvest of excess hatchery fish. The CCA believes that ODFW needs a vibrant, healthy, but selective commercial fishing industry. They also believe the recreational community will need to ensure the fisheries don't impede recovery efforts.

---

Tom Dulcich, Jim Wells,  
Steve Fick  
Salmon for All

Mr. Dulcich commented on the Northwest Sportfishing Industry Association (NSIA) "SAFE for Salmon" proposal. He urged the Commission to not wait until end of the conservation plan to take a look at the issue of marine mammal predation on the white sturgeon population. Mr. Dulcich had three points about the NSIA plan; is it conservation, what's the real issue/solution and is there a basis for collaboration?

Mr. Fick explained the Columbia River maps that were posted.

Mr. Wells read a portion of a letter from Phil Anderson, Deputy Director of Washington Department of Fish and Wildlife, regarding their limited entry process for guides.

Commissioner Smith inquired if Salmon for All would support regulations on guides.

Mr. Fick said he would support it. There is a need to create tools and opportunities for citizens of Oregon. He hears 'how is it going to benefit the guides' not the citizens.

Chair Rae stated that there needs to be a way to coexist and we need to keep working together.

---

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2  
3  
4  
5  
6  
7  
8  
9

**Exhibit A: COMMISSION MINUTES**

The Commission considered approval of the October 9 Climate Change Workshop and October 10, 2008 Commission minutes.

1 *Action:*  
2 Commissioner Englund moved to approve the October 9 Climate Change Workshop  
3 and October 10 Commission minutes. Commissioner Levy seconded the motion and  
4 the motion carried unanimously.  
5

6 **Exhibit B: DUNGENESS CRAB FISHERY BRIEFING**

7 *Staff Presentation:*  
8

9 Mitch Vance, Shellfish Project Leader, briefed the Commission on vessel safety and  
10 other issues for the commercial ocean Dungeness crab fishery. He gave a summary on  
11 the 2007-08 season. Mitch also reported on the Tri-state Dungeness Crab Management  
12 Committee meeting in August. Derelict gear, buoy tag recycling and logbooks were  
13 also discussed.  
14

15 *Public Testimony:*  
16

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Michele Longo Eder  
Newport, OR

Ms. Longo addressed the dockside safety inspections prior to the issuance of a Dungeness crab permit. Recently, the court found that the Commission had the authority, by Administrative Rule, to require a dockside safety exam before issuance of a permit. Dockside safety exams are very important in making sure lifesaving equipment is on board and is in good condition. If a vessel passes, it gets a decal that is good for two years. If a vessel fails, a list is given of what needs to be completed and a re-exam can be done. The voluntary exam is determined by the owner. Crewmen have no voice on the voluntary inspection. Someone needs to think about the unrepresented and unspoken crew. There are many benefits for having a dockside exam.

Commissioner Smith agreed that safety should be viewed as primary priority. He inquired if the Coast Guard was willing to take on this inspection.

Ms. Longo reported that the Coast Guard has said they will conduct a safety check on 100 percent of vessels. They prefer to do the inspections at the dock. If the vessels are not checked voluntarily, the Coast Guard will complete the check while the vessel is underway.

Nick Furman  
Coos Bay, OR

Mr. Furman, Oregon Dungeness Crab Commission Executive Director, spoke to the Commission regarding the 8-week extension of the crab season in the fall. The primary reason for the closure is to minimize handling of crabs during a period when crabs are in a soft-shell condition. He felt that the recreational harvest should be subject to the same accounting as the commercial harvest is. Mr. Furman suggested that the Commission look at the size and daily bag limit associated with the open ocean recreational crab fishery.

Director Elicker reported that the Commission is interested in a mandatory dockside inspection. He asked that if it were to be adopted, what additional workload will there be and how much time it will take.

Steve Williams responded that the process involves licensing. There needs to be some type of document with Coast Guard signatures. There will be a lot of criteria to renew permits that would require additional workload from licensing staff. Some vessels may or may not be utilized and may not have a need to have a safety inspection if they don't go into the water (because of no landing requirement). He felt there would be little impact to staff. The Coast Guard has assured ODFW that they had staff to do this. Renewals of licenses have already begun for this season so this would be for the 2010 season.

2

3 Director Elicker said there will be further discussions with staff and others. He would like  
4 to give the fishery people plenty of notice. He asked Commissioner Englund to assist  
5 with this process.

6

7 *Action:*

8 No action taken. This is an informational item only.

9

### **Exhibit C: MID COLUMBIA STEELHEAD RECOVERY PLAN BRIEFING**

10

11 *Staff Presentation:*

12

13 Rich Carmichael, Interim Northeast Fish Research and Development Program Director,  
14 briefed the Commission on the Conservation and Recovery Plan for the Oregon



1 Steelhead Populations in the Mid-Columbia River Steelhead Distinct Population  
2 Segment. He asked the Commission to review and provide direction on the content of  
3 the Mid Columbia Steelhead Recovery Plan, with particular emphasis on the Oregon  
4 portion of this multi-jurisdictional plan and associated draft conversation plan with  
5 Oregon Administrative Rules. He discussed key elements of the Plan, department  
6 actions and the public comment process, including comments received from the  
7 Independent Multidisciplinary Science Team (IMST).

8  
9 Sue Knapp, Governor's Natural Resource Office, reported that the Governor's Office is  
10 still working on the implementation model and they plan on using the same structure  
11 that was used for the development for the Plan. Ms. Knapp talked about the teams that  
12 will be involved.

13  
14 Chair Rae acknowledged staff and Ms. Knapp on an extraordinary job on the Plan.

15  
16 Public Testimony:  
17

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Gary James  
Pendleton, OR

Mr. James, Fisheries Program Manager for the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), feels the Plan represents the best effort to date due to use of science based methodologies, comprehensive recommendations and effective stakeholder input. The comments submitted by CTUIR during the planning process were addressed. He supports the Plan and looks forward to implementing it.

---

Joe Moreau  
Portland, OR

Mr. Moreau is the lead fish biologist for BLM. He reported that BLM's comments have been satisfactorily addressed. The actions identified in the Plan are voluntary and the resources to fund the actions may be difficult to find; however, the Plan provides a road map that is essential to arriving at an ultimate delisting decision and eventually to broad sense recovery.

---

Rob Walton  
Portland, OR

Mr. Walton was not present to testify; however, Mr. Moreau read a letter on behalf of Mr. Walton stating that he supports the Plan and offered praise to ODFW staff. The proposed plan meets the requirements for a federal plan under the Endangered Species Act and he appreciated the partnerships.

---

Brett Brownscombe  
Portland, OR

Mr. Brownscombe was not present to testify but passed along his support for this Plan and is impressed with its work.

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Paula Burgess  
West Linn, OR

Ms. Burgess is a consultant for The Wild Salmon Center. She felt this Plan is of particular importance. This is the most possible species for delisting. The goal is to accelerate implementation of this Plan. Funds need to be sought to implement the Plan. She also felt there is a need for an implementation plan in the interim.

---

1  
2 Commissioner Smith appreciated that the Plan referenced the Conservation Strategy.  
3 He felt that it should be referenced in all types of plans and documents. He also  
4 appreciated the IMST recommendation to acknowledge climate change.  
5

6 Mr. Charmichael reported that the final draft would include climate change. Their plan is  
7 to generate map overlays to see if they are targeting areas that are vulnerable to  
8 climate change.  
9

10 Commissioner Edge requested to have page numbers added to the document.  
11

12 *Action:*

13 No action taken. This is an informational item only.  
14

**Exhibit D: COMMERCIAL FISHERIES RULE AMENDMENTS**

15  
16 *Staff Presentation:*

17  
18 Michelle Grooms, Interim Fisheries Information Program Leader, asked the Commission  
19 to adopt permanent rules regarding the commercial sale of steelhead trout and walleye  
20 purchased outside Oregon, the Dock Ticket used at time of landing in lieu of a Fish  
21 Receiving Ticket, and other proposed housekeeping changes to Chapter 635 rules.  
22

23 Public Testimony:  
24

---

Bill Kluting  
Monmouth, OR

Mr. Kluting provided comments that were not related to this particular exhibit item. He talked to the Commission about nesting terns that are eating smolts and stated something needs to be done about it.

---

25  
26 Commissioner Klarquist requested that references to “their” be changed to “his/her”.  
27

28 Commissioner Levy also provided some grammatical edits to the Administrative Rules.  
29

30 Chair Rae noted that other typographical errors may be taken care of.  
31  
32

1 *Action:*  
2 Commissioner Klarquist moved to amend OAR 635-006-0225 and 635-006-0230 to  
3 allow Oregon wholesale dealers to sell steelhead trout and walleye purchased out-of-  
4 state to retailers, OAR 635-006-0210 and 635-006-0213 to allow a dock ticket to be  
5 used in lieu of a Fish Receiving Ticket for wholesale dealers using agency approved  
6 electronic fish ticket programs; and housekeeping changes as recommended by staff in  
7 OAR 635, Divisions 004, 005, 006, 041 and 042 and presented in Addendum D.  
8 Commissioner Edge seconded the motion and the motion carried unanimously.  
9

**Exhibit E: BLACK-TAILED DEER MANAGEMENT PLAN**

10 *Staff Presentation:*

11  
12 Pete Test, Deer and Elk Program Coordinator, asked the Commission to adopt the  
13 proposed Black-Tailed Deer Management Plan and associated administrative rules. Mr.  
14 Test discussed the objectives related to the Plan. A vision statement was also added to  
15 the draft Plan. If adopted, the Plan will be reviewed again in 2013 to gauge the  
16 implementation progress and revised in 2018.

17  
18 *Public Testimony:*  
19

---

Al Elkins  
Wilsonville, OR

Mr. Elkins, Oregon Hunter's Association, submitted comments when the plan was first distributed. Mr. Elkins had asked for a meeting with Oregon Forest Industry Council (OFIC), Department of Forestry and ODFW staff to discuss how best to provide habitat for black-tailed deer. He felt the meeting was productive and beneficial to all parties. Short term goals were established at this meeting and he left feeling positive. He thanked Director Elicker and Ron Anglin for putting the meeting together. He also thanked Herman Biederbeck. Mr. Elkins said it is important to continue to have dialogue among everyone.

---

Mike Dykzeul  
Salem, OR

Mr. Dykzeul, Director of Forest Protection for OFIC, thanked the staff for wordsmithing the document. There has been open dialogue between ODFW and OFIC. In earlier drafts, he felt it wasn't quantitative but he was here to support the Plan. Mr. Dykzeul offered amendments to the Administrative Rules.

---

1

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Chuck Woosley  
Corvallis, OR

Mr. Woosley, representing the Oregon Division of the Izaak Walton League of America, was on the review committee for the Plan. The League approves of the Plan and encouraged the Commission to adopt and implement the Plan. Even though they support the adoption of the Plan, he questioned if ODFW could fully accomplish the objectives and strategies with current personnel and funding. He requested that ODFW seek and obtain funding to fully accomplish this. Mr. Woosley said that parasites have not been discussed in the Plan. Parasites need to be monitored as well as disease. He also agreed that the Conservation Strategy needed to be included in the Plan.

---

2

3 Commissioner Smith thanked staff for putting a vision in the Plan and felt it looked good.  
4 He felt timeframes and quantities needed to be included in the objectives. He also said  
5 that the progress needs to be monitored.

6

7 Pete replied that the five-year review would do just that.

8

9 Commissioner Edge thanked staff for including the Conservation Strategy into the Plan.  
10 This needs to be included in everything ODFW does. Global climate change needs to  
11 be thought about in the future.

12

13 Commissioner Englund wished there was a better way to do populations counts in the  
14 future. He hopes hunter reporting will help. He felt a kill count would be beneficial.

15

16 Chair Rae reiterated that the vision language is good and it will be incorporated in the  
17 Plan, if approved.

18

19 *Action:*

20 Commissioner Kerns moved to approve the *Oregon Black-Tailed Deer Management*  
21 *Plan* and adopt the associated administrative rules in OAR Chapter 635, Division 195.  
22 Commissioner Edge seconded the motion and the motion carried unanimously.

23

## **Exhibit F: CERVID DISEASE SURVEILLANCE LIST**

24

25 *Staff Presentation:*

26

27 Colin Gillin, State Wildlife Veterinarian, asked the Commission to adopt the proposed  
28 Cervid Disease Surveillance List and amend rules to remove the reporting requirements  
29 for the sale of cervid parts. The Commission directed staff in May 2008 to define testing  
30 and reporting requirements for cervid license holders.

30

1 Public Testimony:

2

Alan Ross  
Molalla, OR

Mr. Ross asked the Commission to consider Option C; to allow producers to take their own samples. He felt it seemed unreasonable not to allow producers to continue to do this as they have in the past.

Commissioner Smith talked about the chain of custody. He felt it might be possible to take another animal's tissue. If you had an irresponsible producer, that might be an issue.

Mr. Ross responded that it's about a post mortem death. If they report a dead animal, they are responsible for the tissue. If tissue is taken from another animal it would mean there would be two dead animals. He is not sure how it is possible to get samples from a different animal. He had concerns about staff taking the samples in case there was some kind of a mistake. If he made the mistake, it would be his problem. He asked that if it was a staff mistake, who would be held financially responsible.

---

Kathy Simpson  
Terrebonne, OR

Ms. Simpson had concerns over the veterinarian taking the sample in case a mistake was made. She felt that she should be the one responsible for the sample because it is her business on the line. She also didn't know why ODFW was so restrictive on gametes and embryos. She felt that gametes and embryos should be allowed to be imported. She also felt that it is not always possible to have a duplicate sample.

---

Chuck Woosley  
Corvallis, OR

Mr. Woosley reported that the proposals are reasonable and they are valuable to the cervid rules previously adopted. He encouraged the Commission to adopt the proposed rules.

3

4 Commissioner Edge said he did not see any reference in Administrative Rule to retain a  
5 duplicate sample.

6

7 Colin replied that the duplicate sample information was in the Staff Summary but it is not  
8 detailed in the Administrative Rules.

9

10

1 Bill Cook added that this was a practice that ODFW should follow but it doesn't have to  
2 be in Administrative Rule.

3

4 Commissioner Smith inquired if the base stem of the brain could be split.

5

6 Colin replied that he felt that all samples could be split. There are two lymph nodes. He  
7 added that you can take two nodes and take cut each in half. It is the obex that carries  
8 the most prions, which is needed for the sample. The obex could be split. For wild  
9 animal samples, the entire obex is usually sent in. He said the he would prefer to have  
10 half of the samples kept at the lab in case of disasters out of anyone's control (if a  
11 sample was lost, destroyed, etc). He felt the protocol of USDA-APHIS of captive cervid  
12 needed to be followed.

13

14 Chair Rae stated that if department staff takes the sample and there is a mess-up with  
15 the sample then the department is subject to a lawsuit. She asked Bill Cook to talk  
16 about the liability.

17

18 Bill Cook replied that it falls back on the tort law. If the department is found negligent,  
19 the law of negligence kicks in. There is a path for liability.

20

21 Chair Rae also asked Bill Cook to talk about the small business impact (which would fall  
22 under option A and B in the staff proposal).

23

24 Bill Cook replied that it is not significant enough for the law to kick in.

25

26 Commissioner Smith felt that if a producer falls into more years of surveillance due to a  
27 bad sample, he sees it as a significant impact to small businesses.

28

29 Commissioner Levy inquired if the producer could keep half of the sample in their safe  
30 keeping.

31

32 Colin replied that it would fall under the chain of custody. It could be lost, altered, etc.

33

34 Commissioner Kerns reported that there are special evidence bags that are marked and  
35 sealed so evidence could not be tampered with.

36

37 Commissioner Klarquist said that if he was in their shoes, he would want to protect his  
38 investment too, so he is reluctant to say the department should keep everything in their  
39 hands.

40

41 Chair Rae reiterated that the draft Administrative Rules do not talk about sample  
42 splitting but an internal management directive could be done. She asked staff how this  
43 might be implemented if it goes that direction.

44

45 Ron Anglin responded that staff would take internal protocols and have those  
46 implemented into rule. As for the storing of the samples, the department would need to  
47 look to the federal requirements to see who retains the samples, or a third party, if

1 necessary. If there becomes a CWD certification program, it would also kick in that  
2 there needs to be certainty that ODFW could keep track of all the samples. ODFW  
3 would lose control of the samples if they don't hold those samples themselves. He also  
4 reported that the federal accreditation should be coming out for review next month.

5  
6 Commissioner Smith suggested that the producer and the department veterinarian take  
7 the samples together. That way, they are both present and observing the process. The  
8 sampled could be taken and split. There would be one sample for shipping and the  
9 other one could be sealed and kept by ODFW.

10  
11 Ron responded that this could happen right now with rules that are proposed.

12  
13 Commissioner Edge would like to see administrative rules that state there should be a  
14 duplicate sample and it would be obtained by the department veterinarian or an  
15 accredited veterinarian and is retained until the results of the test are known.

16  
17 Chair Rae reminded the Commission that they heard testimony that duplicate samples  
18 aren't always possible.

19  
20 Colin replied that every sample should be able to be split. He always splits all his  
21 samples.

22  
23 Chair Rae said that is it unknown at this time what the USDA might do on a federal  
24 accreditation program. She felt a decision might be something inconsistent with what  
25 might be required in the near future. She proposed to set the decision over and bring it  
26 back at a later time (early 2009).

27  
28 Commissioner Edge requested that Don Hansen, Oregon Department of Agriculture  
29 (ODA) veterinarian, be present when this is brought back before the Commission.

30  
31 Commissioner Levy asked staff to see what ODA does with frozen gametes and  
32 embryos.

33  
34 Chair Rae would like to see the following issues for the next time this goes before the  
35 Commission:

- 36 • Formal decision on who does the testing (ODFW veterinarian or federally accredited  
37 veterinarian)
- 38 • Information on the duplicate sample issue and who should retain the duplicate  
39 sample
- 40 • How the duplicate sample would be retained
- 41 • List of federally accredited veterinarians in Oregon
- 42 • What are the testing procedures for other livestock producers

43  
44 Bill Cook inquired if the public comment period remains closed.

45  
46 Chair Rae replied that the public comment period is still open.

47

- 1 Chair Rae discussed the proposed rules in OAR 635-049-0205 in which “cervid parts  
2 and cervid products” would be deleted from the record keeping rules. This would mean  
3 that record keeping for products, jewelry, etc. would no longer need to be taken and  
4 these products could still be on the market.  
5
- 6 *Action:*  
7 Chair Rae moved to approved 635-049-0205 to be approved. Commissioner Levy  
8 seconded the motion, and the motion carried unanimously.  
9
- 10 Chair Marla Rae adjourned the meeting at 4:40 p.m.