



1 Northwest Region

2 Chris Wheaton, Region Manager, said collection of Spring Chinook broodstock on the  
3 Sandy River has become more challenging since the removal of Marmot Dam. In order  
4 to insure adequate broodstock, ODFW and student interns seine and capture adult fish  
5 in pools on the Sandy. Staff and volunteers also conducted surveys in the Olallie Lake  
6 area. They were disturbed to find an introduced sunfish species at a lake near the  
7 5,000-foot elevation. They also found various amphibians at most lakes surveyed. The  
8 data will be used to make adjustments in stocking rates and locations in the future.

9  
10 Commissioner Edge acknowledged the role the department plays in providing  
11 experiential learning opportunities for Oregon State University (OSU) students.

12  
13 Southwest Region

14 Russ Stauff, Rogue Watershed Manager and Acting Region Manager, said the annual  
15 Oregon South Coast STEP picnic on August 29 was well attended. It was hosted by the  
16 Gardiner/Reedsport/Winchester Bay STEP group at Eel Lake State Park. He said from  
17 August 29 to September 7, the Slammin' Salmon Derby, a fall Chinook fishing event, is  
18 held in Brookings Harbor, whenever the second ocean salmon season occurs. The  
19 Department staffs a booth there. Stauff said Brookings Harbor is highly dependent  
20 upon the local fishery; the three-day event attracts about 4,000 boats.

21  
22 Marine Resources Program

23 Steve Williams, Assistant Administrator Inland Fisheries, reported that the sport ocean  
24 salmon north of Cape Falcon closed August 31, after the quota of 96,500 was met.  
25 There were 13,000 Coho remaining to be caught, so the fishery will reopen September  
26 7 and stay open through the end of the month. South of Cape Falcon fishery started  
27 slow. Some 40,000 fish remain and will be rolled over to the sport fishery. Ocean  
28 salmon fisheries had a good season and a better Coho season.

29  
30 Information and Education

31 Rick Hargrave, Deputy Administrator, discussed improvements to the department's  
32 website. He said more than 400 people responded to an online survey regarding the  
33 website. The Pulse Group conducted the survey, and will provide a final report with  
34 recommendations for new features and redesign. He discussed a collaborative  
35 marketing campaign with the Oregon State Marine Board, the department and  
36 Recreational Boating and Fishing Foundation that resulted in registration of 765 boats.  
37 The campaign generated nearly \$50,000 in revenue for the Marine Board.

38  
39 Chair Rae said she appreciated the outreach efforts to the public.

40  
41 **Expenditure Report**

42 Tom Ruddiman, Deputy Director for Administration, said the department is at the end of  
43 the biennium, so current-year closings have not happened yet. Staff finished the June  
44 final close and will have the report on August at the next Commission meeting. He said  
45 resident licenses are up by 12%, and fishing increased 17.6%. Sales are leveling off,  
46 although they remain strong. The Department of Administrative Services Budget and  
47 Management Division will submit to the Commission the budget document in October.

1 He said the department received federal funds for derelict crab pot removal, and  
2 additional one-time federal revenues for other projects. The state's September Revenue  
3 Forecast reported that General Funds and Lottery Funds are down. He doesn't  
4 anticipate any adjustments to budgets from that forecast. Ruddiman said staff is working  
5 on completing the department's audit done for the year end.

### 6 7 **Administrative Rules/Adopt Temporary Rules**

8 Director Roy Elicker stated for the record that there were 16 temporary rules to be  
9 ratified by the Commission, of which two are new rules. He said in the current agenda  
10 the first rule starts at 635-042-0031, *Fall Commercial Seasons Revised for Columbia*  
11 *River Mainstream Fisheries*, and the last rule listed is 635-042-0145, 635-042-0170, and  
12 635-042-0180, *Columbia River Select Area Fisheries Close to Retention of White*  
13 *Sturgeon on September 6* (listed immediately below).

#### 14 15 **635-042-0031**

#### 16 **Fall Commercial Seasons Revised for Columbia River Mainstem Fisheries**

17 Adopted August 7, 2009; effective August 8, 2009 through December 31, 2009.  
18 Amended rule modifies the fishing area authorized for the fall commercial gillnet salmon  
19 fishery in the Columbia River mainstem, for the fishing period previously scheduled from  
20 7:00 p.m. Sunday, August 9 to 7:00 a.m. Monday, August 10, 2009, from all of Zones 1-  
21 5 to only Zones 2-5.

#### 22 23 **635-043-0105**

#### 24 **Permit Required to Harass Wildlife**

25 Adopted: August 11, 2009. Effective Dates: August 11, 2009 through February 6, 2010  
26 Amend rules relating to harassment of non-threatened or non-endangered migratory  
27 birds.

#### 28 29 **635-039-0085**

#### 30 **Pacific Halibut All-Depth and Nearshore Sport Fisheries Closed from Cape Falcon** 31 **to Humbug Mountain**

32 Adopted August 14, 2009; effective August 16, 2009 through December 31, 2009.  
33 Amended rule closes the sport fishery for Pacific halibut in the area between Cape  
34 Falcon and Humbug Mountain, Oregon, at 11:59 p.m. on Sunday, August 16, 2009  
35 when the quota of 180,088 pounds is projected to have been taken. This rule is  
36 consistent with regulations that have been implemented by the federal government and  
37 the International Pacific Halibut Commission for the 2009 Oregon recreational fishery for  
38 Pacific halibut.

#### 39 40 **635-041-0075**

#### 41 **Treaty Indian Fall Gill Net Fishery Set for Columbia River Above Bonneville**

42 Adopted August 18, 2009; effective August 24, 2009 through December 31, 2009.  
43 Amended rule sets three Treaty Indian gill net fishing periods in the Columbia River  
44 above Bonneville Dam (Zone 6). The fishery consists of one 84-hour fishing period and  
45 two 108-hour fishing periods, from 6:00 a.m. Monday, August 24 through 6:00 p.m.  
46 Saturday, September 12, 2009. Implementation is consistent with action taken August  
47 18, 2009 by the Columbia River Compact agencies of Oregon and Washington in

1 coordination with the Columbia River Treaty tribes.

2  
3 **635-042-0031**

4 **Columbia River Fall Commercial Gill Net Fishing Period Rescinded**

5 Adopted August 21, 2009; effective August 21, 2009 through August 31, 2009.  
6 Amended rule modifies the fall commercial salmon season in the Columbia River  
7 mainstem by rescinding the fishing period previously scheduled for 8:00 p.m. Sunday,  
8 August 23 to 6:00 a.m. Monday, August 24, 2009 (10 hours) in Zones 3-5 upstream of  
9 the Kalama River.

10  
11 **635-042-0031**

12 **Columbia River Fall Commercial Gill Net Fishing Area Modified**

13 Adopted August 24, 2009; effective August 25, 2009 through August 31, 2009.  
14 Amended rule modifies the fishing area authorized for the last two fishing periods in the  
15 fall commercial salmon season in the Columbia River mainstem from Zones 4-5 to just  
16 Zone 5. These fishing periods were scheduled to occur from 8:00 p.m. Tuesday,  
17 August 25 to 6:00 a.m. Wednesday, August 26, 2009 (10 hours); and from 8:00 p.m.  
18 Thursday, August 27 to 6:00 a.m. Friday, August 28, 2009 (10 hours).

19  
20 **635-008-0210 (New Rule)**

21 **Restrictions to Public Access to Department Hatcheries**

22 Adopted August 25, 2009; effective August 26, 2009 through February 21, 2010.  
23 Adopted rule sets restrictions to public access and use of Department hatcheries and  
24 their grounds. The public is prohibited access between the hours of 10:00 p.m. and  
25 4:00 a.m. daily. Open fires and the running of dogs not on a leash are prohibited, for  
26 public safety purposes. This rule also prohibits camping on Department property unless  
27 specifically authorized by the hatchery's manager.

28  
29 **635-014-0090**

30 **Bag Limit for Hatchery Coho Increased in Select Tributaries of the Lower  
31 Columbia River**

32 Adopted August 25, 2009; effective September 1, 2009 through December 31, 2009.  
33 Amended rule allows the sport harvest of three hatchery coho per day in: Bear Creek;  
34 Big Creek; Clatskanie River; Gnat Creek; John Day River; Klaskanine River; Lewis &  
35 Clark River; Youngs Bay; and Youngs River. Modifications allow sport anglers  
36 opportunities to harvest substantial numbers of coho that are returning to hatchery  
37 facilities. Seasons and dates are the same as found in the 2009 Oregon Sport Fishing  
38 Regulations.

39  
40 **635-042-0031**

41 **Columbia River Fall Commercial Gill Net Fishing Period Rescinded**

42 Adopted August 26, 2009; effective August 27, 2009 through August 31, 2009.  
43 Amended rule rescinds the last fishing period authorized for the fall commercial salmon  
44 season in the Columbia River mainstem from Zone 5. This fishing period had  
45 previously been scheduled to occur from 8:00 p.m. Thursday, August 27 to 6:00 a.m.  
46 Friday, August 28, 2009 (10 hours). By rescinding this final fishing period, the fishery  
47 was thereby closed.

1  
2 **635-017-0090**

3 **Bag Limit for Coho Increased In Sandy and Willamette Rivers and Tributaries**

4 Adopted August 26, 2009; effective September 1, 2009 through December 31, 2009.  
5 Amended rule allows the sport harvest of three hatchery coho in each of the Clackamas  
6 and Sandy rivers and Eagle Creek (Clackamas River tributary) effective Tuesday,  
7 September 1, 2009. Modifications allow sport anglers opportunities to harvest  
8 substantial numbers of coho that are returning to hatchery facilities. Modifications also  
9 allow sport harvest of three coho salmon in the Willamette River (river section 2 only)  
10 upstream of Willamette Falls and in the Tualatin, Yamhill, Molalla, and Santiam rivers.  
11

12 **635-005-0055**

13 **Commercial Vessels Allowed to Retrieve Dungeness Crab Gear August 29 Through**  
14 **October 31, 2009**

15 Adopted August 27, 2009; effective August 29, 2009 through October 31, 2009.  
16 Amended rule allows commercial fishermen to retrieve any commercial Dungeness crab  
17 gear from the ocean and transport that gear to shore beginning August 29 and  
18 continuing through October 31, 2009 to facilitate retrieval of gear remaining in the ocean  
19 following closure of the commercial ocean Dungeness crab season. Before the  
20 implementation of crab pot limit rules, it was common practice for commercial fishing  
21 vessels to retrieve another vessel's crab gear and bring it to shore for the owner to pick  
22 up.  
23

24 **635-003-0085**

25 **Commercial Oregon Ocean Terminal Area Chinook Salmon Fisheries**

26 Adopted June 5, 2009; effective September 1, 2009 through December 31, 2009.  
27 Amended rule implements the commercial Oregon ocean terminal area Chinook salmon  
28 fisheries which begin September 1, 2009.  
29

30 **635-018-0090**

31 **Additional harvest Opportunity During Shortened Fishing Season on Walton Lake and**  
32 **Antelope Flat Reservoir**

33 Adopted August 27, 2009; effective September 1, 2009 through December 31, 2009.  
34 Amended rule implements modifications to the daily limits and harvest length  
35 restrictions for all game fish species in Walton Lake and Antelope flat Reservoir from  
36 September 1 through October 18, 2009. There will be no daily catch or possession  
37 limits and no minimum length requirements preceding closure to fishing on October 19.  
38 This closure is earlier than previously published in the 2009 Oregon Sport Fishing  
39 Regulations. On or about October 19, Walton Lake and Antelope Flat Reservoir will be  
40 chemically treated with rotenone in order to remove exotic bullhead catfish (*Amerius*  
41 *nebulosus*) and smallmouth bass (*Micropterus dolomieu*).  
42

43 **635-051-0075**

44 **September Youth Pheasant Hunts**

1 Adopted: August 28, 2009. Effective Dates: August 28, 2009 through September 30,  
2 2009.  
3 Amend rules to correct the season dates for the September Youth Upland Bird Hunt in  
4 John Day.

5  
6 **635-042-0145; 635-042-0160; 635-042-0170 and 635-042-0180**  
7 **Columbia River Select Area Fisheries Close to Retention of White Sturgeon on**  
8 **September 6, 2009**

9 Adopted September 1, 2009; effective September 5, 2009 through October 31, 2009.  
10 Amended rules close the 2009 fall commercial Select Areas salmon fisheries to  
11 retention of white sturgeon effective September 6, 2009. Fall Select Areas fisheries  
12 modified include: Youngs Bay; Blind and Knappa sloughs; Tongue Point/South  
13 Channel; and Deep River.

14  
15 Director Elicker said new rule, **635-051-0105**, was written in a separate memorandum  
16 dated September 1, 2009 from Ron Anglin to the Commission and the Director.

17  
18 **635-051-0015**  
19 **General Tag Requirements and Limits**

20 Effective September 2, 2009 through March 1, 2010

21 Amend rules to allow the department to sell tags after the tag sale deadline. The hunter  
22 must provide the Department with a written affidavit certifying that the person has not  
23 yet hunted during the season for which the tag is sought.

24  
25 Director Elicker said the other new rule, **635-008-0210 (New Rule) Restrictions to**  
26 **Public Access of Department Hatcheries**, is the seventh rule listed in the agenda on  
27 page 2, and that it restricts public access to the department's hatcheries.

28  
29 Director Elicker said he contemplated extending the tag sale deadline for a number of  
30 years and asked Deputy Director Curt Melcher whether the department could do  
31 something for a small number of folks who regularly contact the Director's Office  
32 because they forgot to buy their tag before the tag sale deadline. Elicker said the callers  
33 include Sports Pac license holders and non-Sports Pac holders.

34  
35 Chair Rae asked Larry Cooper to explain the history behind 635-051-0105.

36  
37 Larry Cooper, Wildlife Division Deputy Administrator, said the new rule allows a person  
38 who missed the tag sale deadline to obtain an affidavit certifying that the person has not  
39 yet hunted during the season for which the tag is sought. If the affidavit is approved by  
40 the department's Licensing Services staff, the hunter can purchase a tag and pay a  
41 duplicate tag fee. Cooper noted that staff had expressed concern that a hunter with no  
42 tag could harvest an animal, purchase a tag and return to the field to tag the animal all  
43 in one day. He discussed tag sales deadline processes in other states and said staff  
44 proposes this rule to be a pilot through this year, so staff can evaluate the process and  
45 report to the Commission in June 2010 whether it works or needs to be changed.

46  
47 Director Elicker commended Melcher, Ruddiman, the Wildlife Division and Deanna

1 Erickson, License Services Manager, for their work. He said this rule will provide better  
2 customer service and allow enforcement oversight (via the affidavit). He said for the  
3 record that Captain Walt Markee does not favor the rule and is concerned it will open  
4 the door for abuse by hunters taking advantage of the system; but, Markee understands  
5 why the department would like to try it as a pilot this year.

6  
7 Chair Rae said Captain Markee was trained to be suspicious; that's the nature of an  
8 enforcement officer. She supports trying 635-050-0015 as a pilot. As staff evaluates the  
9 process, she asked that they take a few things into consideration. For instance, if a  
10 person buys a Sports Pac, they may believe they have everything they need. She asked  
11 staff to look at that and see if in the future that would happen. Also, for staff to be more  
12 open to being accountable for the Point of Sale (POS) agents and their potential errors,  
13 particularly when it comes to a preference points, (this issue doesn't have anything to  
14 do with hunter's preference points, it has to do with tag sales). She said if a POS agent  
15 issues the wrong tag and the applicant doesn't notice it until they are out in the field, or  
16 any other circumstance, whether or not as our agent that we ought to be more  
17 accountable for their actions.

18  
19 Director Elicker acknowledged the Commission's concerns. He said since the Director's  
20 reinstatement of Preference Points process was instituted, the Commission had  
21 received less contacts from hunters requesting reinstatement of their preference points.

22  
23 Chair Rae responded that was correct and the Commission are profoundly grateful.  
24 She noted that the Commission is aware that this is not a biological issue. She asked  
25 Steve Williams to talk about 635-008-0210, Restrictions to Public Access of Department  
26 Hatcheries.

27  
28 Steve Williams said 635-008-0210 is specific to the Cedar Creek Access point adjacent  
29 to the Sandy Hatchery. He said Chris Wheaton had reported in the past about issues  
30 there due to large volumes of people, and nefarious activities associated with theft of  
31 metal and gear that department staff has located there that could be associated with  
32 netting of fish. Previously, staff signed the area closed. The OSP said it would assist  
33 them to have a rule in place that restricts access at the facility between 10:00 p.m. and  
34 4:00 a.m. He said the department supports this request.

35  
36 Chair Rae asked for a motion.

37  
38 *Action: Commissioner Edge moved to ratify the temporary rules as presented by*  
39 *the Director. Commissioner Englund seconded the motion. Motion passed*  
40 *unanimously.*

41  
42  
43 **PUBLIC FORUM**

44  

Dave GrosJacques Grants Pass, OR	Dave GrosJacques, president of Southern Oregon Flyfishers, is concerned for the water quality at Lemolo Lake, and the effect that fisheries management has had on that water quality. About
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15 years ago, he began spending weeks with family at the lake. This ended in summer 2006 when the first blue-green algae warnings were posted. There have been algae warnings every summer since then. He said the Diamond Lake restoration project started in 2005. Screens were supposed to be installed to prevent adult tui chub from going into Lemolo Lake. They were not built, and the tui chub got into the lake and affected the water quality. ODFW, PacifiCorp and the Umpqua National Forest Service are trying to remove the fish. He urged the Commission to do more for the lake and keep it fishable and swim-able all summer.

1  
2 Chair Rae said Mr. GrosJacques is aware, as is the owner of the Lemolo resort, that  
3 Denney, his regional staff and the Fish Division are working to resolve this issue.  
4

5 **Exhibit A: COMMISSION MINUTES**

6 Chair Rae said there were several grammatical and punctuation changes in the  
7 minutes, but few substantive changes or edits to the minutes. She gave a paper copy  
8 with edits to Teri Kucera, Executive Assistant, and noted the substantive changes on:

- 9 • Page 3, line 46, change Fish Division to "*Wildlife Division*".
- 10 • Page 9, line 38, add a *period* after the phrase, "...the zones are not meeting  
11 harvest quotas.", and delete the phrase, "...it is not due to breeding seasons."
- 12 • Page 9, lines 39-40, change the sentence to read, "*Because cougars breed  
13 throughout the year, there is as much risk during the current season of accidentally  
14 taking a female with kittens.*"
- 15 • Page 9, line 41, change the phrase, "...limiting the cougar sales tag deadline.", to  
16 read, "*..eliminating the cougar tag sales deadline.*"
- 17 • Page 17, third paragraph, first sentence, change "Commission" to "*Department*",  
18 and after the phrase "...advisory only.", add "*..to county planning commissions*".

19  
20 *Action: Commissioner Edge moved to adopt the August 7, 2009 minutes as*  
21 *edited. Commissioner Smith seconded the motion. The motion passed*  
22 *unanimously.*  
23

24 **EXHIBIT B: DIAMOND LAKE MANAGEMENT PLAN**

25 Laura Jackson, Umpqua District Fish Biologist, gave a PowerPoint overview of the  
26 revised Diamond Lake Management Plan (DLMP). She provided information on past  
27 management practices, and the removal of the tui chub and algae by Rotenone in 2006.  
28 She talked about ongoing efforts to do invasive species eradication. She said the 2009  
29 DLMP will maintain the lake as a family friendly fishery, and enhance the health of the  
30 lake.

31  
32 Jackson detailed dramatic improvements that occurred in 2008 and 2009. Overall the  
33 department has met the water quality standards set by Oregon Department of  
34 Environmental Quality (DEQ), with a score above 6. She discussed the implementation  
35 of Trout Fishery Management and said she anticipates stocking fewer fish in 2010; staff



1 would stock up to 400,000 fingerlings; DEQ's limit is 440,000. From public involvement  
2 during the plan's development, the May DLMP has been revised to discuss the three  
3 standards that will be used to monitor the lake's health and fishery objectives:

- 4 1. DEQ's Water Quality/Diamond Lake TMDL report (2006);
- 5 2. Variety of biological indices; and
- 6 3. An accounting-type stocking model.

7  
8 She said the department has received a lot of comments in regard to invasive species  
9 prevention. Overall, this is an experimental process, and staff needs to be adaptive in  
10 order to better monitor or evaluate the various factors. She talked about DLMP  
11 strategies:

- 12 • Keep Diamond Lake as a Basic Yield trout fishery; fingerling stocking will provide  
13 the major fish production for the lake.
- 14 • Legal or trophy sized trout could be stocked to enhance production or help  
15 balance the lake's ecosystem.
- 16 • Consumptive fishery that is family oriented for harvesting trout.
- 17 • Monitoring and evaluation to maintain fishery objectives and healthy lake  
18 ecology.
- 19 • Invasive species prevention and control of illegally introduced fish species.

20  
21 Jackson said staff recommends making no modifications and to approve the ORS and  
22 the revised DLMP.

23  
24 Chair Rae thanked Jackson for her report and moved to public testimony.

25  
26 **Public Testimony**

Susan Morgan Roseburg, OR	Susan Morgan, Douglas County Commissioner, represents the Commissioners of District 4 of the Association Counties. She discussed the condition of Diamond Lake and said Douglas, Jackson and Klamath Counties lost in excess of \$6 million in income in 2004 as a result of the illegally introduced tai chub in Diamond Lake. Since the 2006 treatment of rotenone, the recreational income has exceeded historic levels. She read the issues they support listed in their letter dated August 31 to the Commission: <ul style="list-style-type: none"><li>• The department's DLMP consistent with Basic Yield Management Alternative of Oregon's Trout Plan.</li><li>• The department's trout stocking strategy under the Final Environmental Impact Statement (FEIS) agreement to release numbers of fingerlings at a conservative level in 2007 and 2008 and in concert with the lake's water quality and fishery goals in future years.</li><li>• District 4 urges the Commission to adopt a management plan that is based on these important goals and uses the DEQ standards and the biological</li></ul>
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	<p>indices established in the J. Eilers et. al. (January 2008) and Eilers' (July 2009) reports.</p> <ul style="list-style-type: none"> <li>• The lake is still in transition; therefore the actual numbers, size and timing of the annual fish releases should be determined by department staff using adaptive management practices.</li> <li>• The department's management strategy for an appropriate level fingerling stocking program based on established scientific DEQ and biological indices standards in order to maintain and enhance the productivity and health of the lake's water.</li> <li>• She said District 4 encourages the Commission to adopt the OARs (635-500-0703) as recommended by department staff.</li> </ul>
<p>Rick Rockholt Diamond Lake, OR</p>	<p>Rick Rockholt, employee of Diamond Lake Lodge for 25 years, distributed a collage of angling photographs called Oregon's Gem of the Cascades. He talked about the history of Diamond Lake and the public's reaction to the tui chub issue in the 1990s. People were afraid of the water quality issues there, and they stopped going to Diamond Lake. He said water quality is now excellent and business at the resort has improved. People are very appreciative of what the department and the Commission have accomplished. He thanked all who were involved in the restoration, and supports the proposed DLMP.</p>
<p>Diana Wales Roseburg, OR</p>	<p>Diana Wales, for Umpqua Valley Audubon, said the DLMP is a substantial improvement over the May version because it includes references to the TMDL and to Joseph Eilers' work. She proposed the following changes:</p> <ol style="list-style-type: none"> <li>1. In Attachment 4 – OAR 635-500-0703, third line from the bottom at 1(b)(b), add the phrase “ecologically based” before the word “fishery” in both places that “fishery” appears in that sentence.</li> <li>2. In Attachment 3, Draft DLMP, page 8, she suggested deleting the second <u>full</u> paragraph that references “accounting-type stocking model” and delete throughout the document any reference to using three tools, one of which is the accounting model. Wales said stick with the TMDL and Eilers models.</li> <li>3. Pages 6 and 7, Attachment 3, discuss the discovery of Nonnative Invasive Golden shiners in July 2008. Wales said staff needs a management plan because in the</li> </ol>

	<p>May DLMP draft the hypothesis was that these shiners were just adults that had been dumped in the lake versus the current draft DLMP that acknowledges the shiners are successfully spawning.</p> <p>Wales said failure to put in the screens and allowing the tui chub to get into Lemolo Lake is going to be a nightmare for the agency. She has been involved with the work on Diamond Lake since 1998. She distributed four handouts in support of Joseph Eilers' research:</p> <ol style="list-style-type: none"> <li>1. <i>An Ecologically-Based Index for Guiding Salmonid-Stocking Decisions in Diamond Lake, Oregon</i> by Joseph M. Eilers, of JC Headwaters, Inc. (July 2003). Wales said this became the cornerstone of the department's proposal to be allowed to rotenone the lake.</li> <li>2. <i>Diamond Lake Restoration Project Final Environmental Impact Statement – Umpqua National Forest</i> by the United State Department of Agriculture. She said Alternative 5 (Modified Rotenone Treatment and Post-Treatment Fish Stocking) was adopted (page 15). She said on page 16 that she put brackets around ODFW's commitment in terms of the DLMP being based on the Joseph Eilers 2003 model. She said in <i>Appendix BB – Supplemental Plans Supporting the Diamond Lake Restoration Project</i> (page 20) the focus is on using the Eilers model. The 2006 Umpqua Basin TMDL and the Diamond Lake Supplement both focus on Eilers' work.</li> <li>3. <i>Chemical and Biological Metrics for Assessing the Condition of Diamond Lake, Oregon</i> by Joseph Eilers, David Loomis, and Mari Brick.</li> <li>4. <i>Water Quality &amp; Biological Response to Rotenone Treatment in Diamond Lake, Oregon</i> by Joseph Eilers, MaxDepth Acquatics, Inc. (June 2009).</li> </ol> <p>Wales said the accounting model is new, hasn't been used or been peer reviewed; it doesn't add anything, it detracts. She said Diamond Lake is a wonderful opportunity to use the other two tools which have been developed, peer reviewed, and done wonderful things. She asked the Commission to use it as a demonstration of how there can be a responsible, ecologically based fishery.</p>
Dave GrosJacques	Dave GrosJacques, Southern Oregon Flyfishers, spoke in

Merlin, OR	support of the Diamond Lake Management Plan. He said too many fish at the lake might be a problem for fish biologists, but not for fishermen. He has heard good reports from them this year. He thanked the staff members who have worked over the years to improve the lake.
Rod Brobeck Portland, OR	Rod Brobeck, Oregon Wildlife Heritage Foundation, said he likes the draft Management Plan but does not see a great emphasis on controlling invasive species in the lake. He spoke with Laura Jackson the night before and now understands the plan more clearly, and that it is well taken care of, but the public may not read that in the proposed management plan as written.

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Chair Rae asked Laura Jackson and Steve Denney to come forward.

Commissioner Edge said he heard two things from Ms. Wales' comments: 1) an appreciation of the Eilers' Indices in the DLMP; and 2) less appreciation for the accounting type stocking model. He asked what additional information the accounting model provides, and are there situations where staff envisions that the accounting model would say do one thing, yet the other quality parameters would suggest doing something else.

Jackson has used the accounting model because it allows her to try out different scenarios regarding the numbers of fish she needs to order in September before she gets other biological values in October and January. She said the department is also interested in the more comprehensive ecological model that Wales supports. Jackson met with Paul Heberling, Umpqua Basin Coordinator for DEQ, and received a 35,500 grant for hydroecoustics monitoring of the submerged vegetation in the Umpqua River. The next grant from DEQ will fund an ecological model with Eilers that compiles the same data here but puts it in a more interactive format.

Denney said although the ecological model provides good information, staff would be in a reactive mode after noticing any problems. The accounting method is more predictive and allows Laura to take actions with stocking, prior to problems showing up. Chair Rae said it's not an either-or, it's both. Denney said yes, staff uses all the models; they are pretty valuable tools. He disagrees with Ms. Wales with regard to throwing one out. He likes the ability of all in concert.

Commissioner Edge noted that two folks addressed invasive species. He asked Jackson to share her approaches to dealing with the invasive species issue at the lake.

Jackson said staff is doing all they can to meet the obligations of invasive species. For instance, boat washes were established, and there is a power station and a station at the Texaco station. She said U.S. Forest Service and department staff both check boats prior to being launched in the lake. OSP and the Oregon Marine Board have been at

1 Diamond Lake but there is lack of funds to hire a deputy full time. She said there were  
2 public comments noting the lack of department signs in other languages.

3  
4 Denney added that staff has an Invasive Species workgroup that meets on a regular  
5 basis with DEQ, Diamond Lake Lodge, the Forest Service and Douglas County.

6  
7 Commissioner Edge said the DLMP does a good job of addressing earlier concerns  
8 about what the water quality parameters are. He said Eilers' letter suggests that he feels  
9 better about this situation than at the time the draft was prepared. Edge likes keeping  
10 the two different models: the ecological water quality parameters and the accounting  
11 model. He thinks Ms. Wales' suggestion to add "ecologically based" to the OARs is not  
12 inconsistent with the two models being retained. He suggested adding a paragraph  
13 about the information related to invasive species; it wouldn't change the OARs. He said  
14 Rod Brobeck's suggestion that any member of the public that reads this plan should be  
15 aware of all the things that not just this agency but the Invasive Species taskforce is  
16 doing to get control of a very serious problem, not just for Diamond Lake but statewide.

17  
18 Denney agreed to incorporate Commissioner's Edge suggestion.

19  
20 Chair Rae agreed. Hearing no disagreements, she asked for a motion.

21  
22 *Action: Commissioner Edge moved to adopt the Diamond Lake Management*  
23 *Plan and Oregon Administrative Rules as proposed by staff, and attachments 3*  
24 *and 4, and accept the two changes to read "ecologically based".*

25  
26 Chair Rae noted that adding "ecologically based" does not say to throw everything else  
27 out; it just means work in concert with.

28  
29 *Commissioner Smith seconded the motion. The motion passed unanimously.*

30  
31 The Commission recessed at 10:10 a.m., and reconvened at 10:23 a.m.

32  
33 **Exhibit C: RESTORATION AND ENHANCEMENT PROJECT APPROVALS**

34 Laura Tesler, Restoration and Enhancement (R&E) Program Coordinator, introduced  
35 Lonnie Johnson, R&E Board Chair, and in the audience Dixie Boley (seafood  
36 processing), and Darlene Kline-Dolby (sport fishing). She presented projects  
37 recommended for funding by the R&E Board on August 7. During this funding cycle the  
38 Board approved 15 projects. She noted that the JWTR Fishing Access & Enforcement  
39 Project is R&E's first joint project with the Access and Habitat Board in 14 years. For the  
40 second funding cycle of 2009-11 biennium, the Board recommends funding the 15  
41 projects for a total of about \$560,000, which leaves \$2.5 million for the rest of the  
42 biennium. Tessler said the R&E staff recommends Commission approval of the projects.

43  
44 Chair Rae said there is no public testimony.

45  
46 Commissioner Edge said the Astoria High School Fisheries Technology Program funds  
47 a science teacher. Chair Rae said the R&E Board was painfully aware of requesting

1 one-time funds to part-time teachers, and using the loss of funds to backfill other funds.  
2 She said the Board and the Commission are in tune to that. She asked Lonnie Johnson  
3 to talk about the justification. Johnson said the Board is concerned about funding  
4 positions instead of projects. In this case, the Board recommended the funding because  
5 the program involves high school youth. They were warned they must find another fund.  
6 Commissioner Englund understands the issue of funding this body. He said this is a  
7 spawning ground for kids going into fish and wildlife careers.

8  
9 Chair Rae asked for a motion.

10  
11 *Action: Commissioner Kerns moved to approve all 15 projects. Commissioner*  
12 *Levy seconded the motion. The motion passed unanimously.*

13  
14 **Exhibit D: ACCESS AND HABITAT PROJECT APPROVALS**

15 Matthew Keenan, Access and Habitat (A&H) Program Coordinator, introduced Jim  
16 Morrell, A&H Hunter Representative to the Board. Keenan discussed four project  
17 proposals for the Commission (see Attachment 2):

- 18 • 2009-18 – JWTR Travel Management Area (South Central Oregon).
- 19 • 2009-19 – Oblack Farm Fertilization #3 (Northwest Oregon).
- 20 • 2009-20 – Schmidlin Farm Fertilization #3 (Northwest Oregon).
- 21 • 2009-21 – Ellis Farm Fertilization #3 (Northwest Oregon).

22  
23 He said JWTR is in the Klamath Watershed District. The area encompasses 608,000  
24 acres of industrial timberland that provide 18,000 hunter use days. There has been a  
25 huge increase in illegal and unethical behavior. If nothing is done the landowner may  
26 close the property. He said funding from A&H for increased law enforcement would be  
27 \$200,626 and cooperator funds would total \$703,800 for a total project cost of  
28 \$904,426, which includes hiring of a retired OSP trooper to provide law enforcement for  
29 five years. The project will also provide information kiosks for education purposes.

30  
31 Keenan discussed the Oblack, Schmidlin and Ellis projects. All are similar and have  
32 been funded by A&H for the past six years. He said the landowners have received  
33 heavy grazing pressure from elk, which makes it difficult to farm, and are asking for  
34 fertilizer to offset the cost of wildlife damage. A&H and R&E would split the cost. The  
35 projects would provide 608,786 acres of access over 30,679 acres for habitat  
36 improvement. Staff recommends the Commission approve the recommendations from  
37 the Access and Habitat Board for project funding.

38  
39 Chair Rae moved to public testimony.

40  
41 **Public Testimony**

Ken Hand Klamath Falls, OR	Ken Hand, Regional Director for Mule Deer Foundation, favors funding the JWTR land. Closing the land would have a huge effect on hunting. He said the land is not owned by Jeld-Wen it is owned by Dick Wen. Hand has hunted this land many years, and when Wen bought this land, the hunters worried he would develop it. Closure of the land would be devastating to Klamath County.
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<p>Fred Craig Grants Pass, OR</p>	<p>Fred Craig, President of Oregon Hunters Association (OHA), said for \$200,000 if he could access the property for one year he could make a lot of money. The Klamath OHA chapter has put a lot of labor and money into this land. This is the only place in Klamath County you can hunt turkeys.</p> <p>Director Elicker said Ken Hand is the past President of OHA and Fred Craig is the current President. He thanked them and OHA for their work and support of the department during the 2009 Session.</p> <p>Craig said OHA and the department have developed a more open relationship over the years and that's due to Elicker and the department being more open with them.</p> <p>Commissioner Kerns said he is acquainted with Mr. Wen, and believes helping him is the right thing to do.</p>
<p>Jim Morrell Sisters, OR</p>	<p>Jim Morrell, A&amp;H Board member, said at the last meeting, one issue that came up was a tag specifically dedicated to the Blue Mountain Elk Initiative. The Board supported it unanimously, although that would require legislation. He discussed the 2010 meeting schedule: January/July in Salem; April in Medford; and October in Boardman. He thanked the Commissioners for their support of the A&amp;H fee increase to \$4. The Board suggested putting together a letter of thanks to the participating landowners.</p>

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After discussion about the various projects, Chair Rae asked for a motion.

*Action: Commissioner Smith moved to approve the recommendations of the Access and Habitat Board for project funding. Commissioner Kerns seconded the motion. The motion passed unanimously.*

**Exhibit E: SENSITIVE SPECIES LIST RULES UPDATE**

Peg Boulay, Sensitive Species Coordinator, during a slide presentation gave an update on two existing rules.

Issue 1: Updating taxonomic standards and names in Division 44 (OAR 635-044-0002). She said taxonomy is how species are classified. Standards change over time as understanding of species increases. Boulay said staff recommends adopting changes to rules to update taxonomic standards and names; and common scientific names accordingly.

Issue 2: Updating and clarifying rules pertaining to the Sensitive Species List, (OAR 635-100-0040) an administrative list that the department implements in accordance with the Wildlife Diversity Plan and Sensitive Species Rule. Boulay said staff recommends adopting changes and clarifications for rules pertaining to Sensitive Species List.

1  
2 Chair Rae said there was no public testimony and asked for a motion.

3  
4 *Action: Commissioner Edge moved to revise Oregon Administrative Rules as*  
5 *proposed by staff. Commissioner Smith seconded the motion. The motion*  
6 *passed unanimously.*  
7

8 Chair Rae said Peg Boulay had accepted a new position at the University of Oregon  
9 and that the Commission wishes Peg Boulay well and to stay in touch. Boulay said she  
10 enjoyed her tenure with the department. Director Elicker also thanked Boulay for her  
11 service to ODFW.

12  
13 Chair Rae moved Exhibit F up on the agenda and before the Executive Session.

14  
15 **EXHIBIT F: MOTION TO RECONSIDER COMMERCIAL FISHING LICENSE**  
16 **SUSPENSIONS**

17 Steve Williams discussed the reconsideration and background of the commercial fishing  
18 license suspension for Dennis Sturgell. Williams said *Attachment 2 – Notice of Intent to*  
19 *Revoke Commercial Fishing Licenses* includes all the Oregon Revised Statutes (ORS)  
20 giving the Commission authority to revoke or suspend licenses. The department notified  
21 Dennis Lee Sturgell on May 18, 2009, of the Commission's decision to suspend his  
22 commercial fishing license and a specific crab permit.

23  
24 ***Chair Rae said in the Commission's original consideration of this matter,***  
25 ***Commissioner Englund indicated his recusal of consideration for the original***  
26 ***decision. She asked Commissioner Englund if he wished to do that again for this***  
27 ***reconsideration. Commissioner Englund answered yes. Chair Rae said the***  
28 ***record will show that Commissioner Englund will abstain from consideration of***  
29 ***this matter.***  
30

31 Williams said the May 18 Notice of Intent to Mr. Sturgell included *Section IV. Request*  
32 *for Hearing* with language giving Sturgell 60 days (until July 17, 2009) to request a  
33 contested case hearing to challenge the proposed suspensions. The agency did not  
34 receive a request from Sturgell before July 17, so the Final Order was signed by Chair  
35 Rae on August 4, 2009 (Attachment 4). Williams said the department did receive  
36 several pieces of correspondence from Sturgell's attorney Thane W. Tienson on July 30  
37 (Attachment 3), August 13 (Attachment 5), and August 24 (Attachment 7) that requested  
38 and listed why Mr. Sturgell should be given a reconsideration hearing.

39  
40 Williams said it is very clear from the documents developed by Senior Assistant  
41 Attorney General Bill Cook that the Commission has several options available.

- 42
- 43 • Based on the facts the Commission can decline to reconsider the final order.
  - 44 • Based on the request that Thane Tienson made, the Commission can reconsider  
45 and withdraw the Final Order and allow Mr. Sturgell to get his hearing.
  - 46 • Pursuant to ORS, the Commission can reconsider and allow Mr. Sturgell a  
47 contested case hearing, but can at the same time leave the final order in place  
during that reconsideration.



1  
2 Director Elicker said staff spent a lot of time with legal counsel reviewing the documents  
3 from Mr. Sturgell's attorney. He said Mr. Tienson believed he had communicated the  
4 request by the nature of his conversations with state legal counsel. Elicker said the  
5 Commission has not taken upon itself to suspend any commercial fishing licenses for  
6 many years, and that the department is sensitive to the nature of what it has asked the  
7 Commission to do, which is suspend this man's commercial fishing license and crab  
8 permit. That's a very serious thing and what that means economically to this person; so,  
9 staff recommends allowing the contested case hearing to go forward.

10  
11 Chair Rae said in discussions with Counselor Cook, with the attorneys from the  
12 Department of Justice, as well as reliance on the Attorney General's Administrative Law  
13 Manual, the filing of this Petition for Reconsideration, and for rehearing - this is actually  
14 a reconsideration. She said the agency's decision to grant that, if the Commission does  
15 that with this pending motion, does not stay the effect of the order that's in place now.  
16 So the final order, unless the Commission determines to withdraw that, would remain in  
17 effect pending this contested case hearing. She noted no public signed up for public  
18 testimony; there isn't an opportunity for public comment because this is an  
19 Administrative Procedures Act process.

20  
21 Commissioner Klarquist asked if the Commission was being asked to consider the  
22 amended petition that Sturgell made, which is Attachment 6 in the Commission packet  
23 where Sturgell is requesting a hearing to contest the notice of intent to revoke his  
24 commercial license and crab permit.

25  
26 Chair Rae said correct, and noted that if the Commission were to grant the opportunity  
27 for the contested case hearing due to circumstances beyond his control, which  
28 apparently concerns his legal counsel and communications there, that in that contested  
29 case hearing, the record would not be limited simply to this conviction for which he pled  
30 guilty, but potentially others. Chair Rae asked for a motion.

31  
32 *Action: Commissioner Klarquist stated it was appropriate to find that the Final*  
33 *Order should stay in place; therefore, given the circumstances that staff*  
34 *presented to us, I move to reconsider and accept Mr. Sturgell's late hearing*  
35 *request, finding that his failure to file on time was caused by a circumstance*  
36 *beyond his reasonable control. Commissioner Edge seconded the motion.*

37  
38 Chair Rae clarified that the motion by Commissioner Klarquist and seconded by  
39 Commissioner Edge is that the Commission reconsider and accept Mr. Sturgell's late  
40 hearing request. She noted for the record that the motion does not withdraw the final  
41 order; so, the final order would remain in place pending the contested case hearing  
42 under Commissioner Klarquist's motion and Commissioner Edge's second.

43  
44 *The motion passed by a yes vote from Commissioners Edge, Smith, Kerns,*  
45 *Klarquist, Levy and Chair Rae, with Commissioner Jon Englund abstaining from*  
46 *the vote.*

1 Chair Rae returned to the Director's Field Reports and asked OSP Lieutenant Dave  
2 Gifford, Southwest Region Fish and Wildlife, to give his report.

3  
4 Lieutenant Gifford said two weeks ago an off-duty patrol officer observed a large vessel  
5 in tow that was incrustated with mussels and seaweed, at a truck stop. The officer located  
6 the vehicle and talked to the owner. The owner said the boat came out of saltwater.  
7 There were specimens that were alive and could have gotten into Oregon waters. In  
8 another incident, a family spotted a three-and-half-foot alligator in a pond that's  
9 connected to the Applegate River. The officer was able to euthanize the animal and  
10 recover it. Gifford discussed OSP vacancies and said two of the three sergeant  
11 vacancies have been filled. ODFW's fee increase will help enforcement efforts in Bend  
12 and Prineville. He discussed complaints with regard to the bow hunting season, and  
13 several incidents where troopers issued citations to hunters for various violations.

14  
15 Chair Rae thanked Lt. Gifford for his report, and said the Commission will discuss 2010  
16 meeting dates before recessing for lunch followed by an Executive Session.

## 17 **OTHER BUSINESS**

### 18 **2010 Commission Meeting Dates**

19  
20 Chair Rae said none of the proposed 2010 dates were set in stone. Discussion  
21 followed. Director Elicker suggested bringing a calendar forward for the Commission's  
22 approval at their October 2 meeting to allow everyone to check on various schedule  
23 conflicts. The Commission agreed.

## 24 **EXECUTIVE SESSION**

25  
26 Chair Rae announced that immediately following lunch the Commission was going into  
27 Executive session for consultation with counsel to be briefed on current pending legal  
28 matters pursuant to ORS 192.660 (2)(h), and a Real Property Transaction pursuant to  
29 ORS 192.660 (2)(e). Representatives of the news media and designated staff shall be  
30 allowed to attend the Executive Session. All other members of the audience are asked  
31 to leave the room. Representatives of the news media are specifically directed not to  
32 report on any of the deliberations during the Executive Session, except to state the  
33 general subject of the session as previously announced. She said no decision may be  
34 made in Executive Session. At the end of the Executive Session the Commission will  
35 return to open session and welcome the audience back into the room, so she can  
36 adjourn the meeting.

37  
38  
39 The Commission recessed for lunch at 11:51 a.m.

40  
41 Commissioners Bobby Levy and Zane Smith left the meeting.

## 42 **ADJOURN**

43  
44 After the Executive Session, the Commission reentered the public session at 1:31 p.m.  
45 and Chair Rae adjourned the meeting at 1:31 p.m.