



Oregon Fish and Wildlife Commission Minutes

Meeting:
June 3, 2010 - 1:00 p.m.
Oregon Department of Fish and Wildlife
Commission Room
3406 Cherry Avenue N.E.
Salem, Oregon 97303

Meeting:
June 4, 2010 - 8:00 a.m.
Oregon Department of Fish and Wildlife
Commission Room
3406 Cherry Avenue N.E.
Salem, Oregon 97303

Commission minutes are considered draft until approved by the Commission at its next 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
Dan Edge, Vice-Chair
Jon Englund, Commissioner
Skip Klarquist, Commissioner
Carter Kerns, Commissioner
Bobby Levy, Commissioner
Bob Webber, Commissioner

Roy Elicker, Director
Curt Melcher, Deputy Director
Debbie Colbert, Deputy Director
Bill Cook, Assistant Attorney General
Steve Sanders, Assistant Attorney General
Teri Kucera, Executive Assistant

MEETING

On Thursday, June 3, 2010 at 1:00 p.m., Chair Marla Rae called the Oregon Fish and Wildlife Commission (Commission) meeting to order. She noted that Commissioner Dan Edge had been delayed. She said the Commission would meet on July 16 at 1:00 p.m. to discuss strictly budget-related matters. She also said when two legislators arrived at the meeting to testify on the Goose Task Force Recommendations that she would allow their testimony at that time.

Exhibit A: SAUVIE ISLAND WILDLIFE AREA PLAN

Nancy Breuner, Wildlife Area Operations Coordinator, said the Sauvie Island Wildlife Area draft Plan (Plan) was presented at four public meetings between June and September 2009. Changes were made to the Plan necessitating another briefing to the Commission and another public review period. None of the four goals were changed; although revisions were made to several of the objectives in the draft Plan. Breuner discussed the changes and said one more public meeting is scheduled June 16 at the Sauvie Island School. Public comments received will be incorporated into a final draft plan that will be presented to the Commission on August 6, 2010 in Salem.

Mark Nebeker, Wildlife Area Manager, discussed the planning process and the changes made to the key management issues as a result of public and internal comments.

- Increasing goose populations;
- Requests for hunting opportunities;
- Increased wildlife viewing opportunities; and
- Oregon Conservation Strategy habitat restoration.

Nebeker also discussed in detail the Plan's four goals and the objectives of each goal:

- 1 1. To protect, enhance and manage wetland habitats to benefit fish and wildlife
- 2 species.
- 3 2. To protect, enhance and manage upland habitats to benefit a wide variety of
- 4 wildlife species. In Objectives 2.1, 2.3 and 2.4 total acreage has been adjusted.
- 5 3. To maintain waterfowl hunting programs and to provide a variety of other fish and
- 6 wildlife oriented recreational and educational opportunities to the public that are
- 7 compatible with Goals 1 and 2.
- 8 4. To control other public uses to minimize impacts on fish and wildlife, their
- 9 habitats, and fish and wildlife related recreation and to maintain the security of
- 10 the wildlife area and reduce disturbance to neighboring private lands.

11
 12 Before taking testimony, Chair Rae moved to **Exhibit C – Goose Task Force**
 13 **Recommendations.** She welcomed Senator Betsy Johnson (D-16), Northwest Oregon;
 14 and Representative Mike Schaufler (D-48), Happy Valley.

15
 16 Representative Schaufler thanked the Commission and said he sat on the Ag and
 17 Natural Resources Committee in 2009; then he was appointed to this Task Force. There
 18 are millions of dollars of crops being destroyed. He said there are a number of
 19 recommendations, but in the end, if I graze my cattle on a neighbor's land, I have to
 20 compensate them for that. Landowners should be compensated for goose damage. He
 21 thanked Chair Rae for her years of service.

22
 23 Senator Johnson, Chair of the Oregon Goose Control Task Force, discussed Senate Bill
 24 622 which created a task force to represent hunting, conservation, farming, aviation,
 25 and legislative interests. She asked the Commission to endorse the Task Force's
 26 recommendations so negotiators going to Alaska for the Pacific Flyway Treaty re-
 27 negotiations on the Flyway Contract can deliver the message that goose populations in
 28 the Willamette Valley must be brought under control and managed differently than they
 29 are currently managed under the Flyway Treaty. The declining Dusky Canada Geese
 30 population complicates the issue because they possibly face an ESA listing.

31
 32 Chair Rae thanked Senator Johnson and Representative Schaufler. She said this issue
 33 is an increasing dilemma in the co-management responsibilities.

34
 35 Chair Rae returned to **Exhibit A** on the agenda.

36
 37 **Public Testimony:**

Libby Wentz Gladstone, OR	Libby Wentz distributed written testimony and said she's gone to Sauvie Island to train coonhounds off leash since 2004. She's opposes the Plan because it allows rabbit hunting but has no provisions for raccoon hunting. She's concerned about the disturbance to roosting waterfowl and Sauvie Island residents, and the difficulty for law enforcement to maintain peace and safety at night. She asked that night parking permit be made available to accommodate raccoon hunting; benefits would include less illegal drug activity and reduced traffic. On Page 63,
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	paragraph 3, "Trapping of furbearers..." she said this statement is false. There is no recreational activity for furbearers. She disagreed with Strategy 2, "Maintain closure for furbearers...", and said this is due to the animosity that the manager has against dog hunters. Wentz wants the ability to pursue raccoons at night. She has no problem with a night parking permit, or with not carrying a weapon. Also, she doesn't eat raccoon or rabbit; she takes pictures of her dogs and raccoons.
Gerry Pavelek Jefferson, OR	Gerry Pavelek represented the Oregon Duck Hunters Association and said they support the revised draft plan.

1
2 Chair Rae said there will be one more public meeting; staff will bring the SIWA Plan
3 before the Commission in August.
4

5 **Exhibit B: ACCESS AND HABITAT PROJECTS**

6 Matthew Keenan, Access and Habitat (A&H) Program Coordinator, introduced A&H
7 Board members Jim Morrell and Tom Alkire. Keenan distributed a handout, *Exhibit B*
8 *Handout – Percent Public Land*, and discussed the percent of each wildlife
9 management unit that is public land. He said all the projects are located in western
10 Oregon: Abiqua Basin Access, North Coast TMA (Travel Management Areas),
11 Willamette Private Lands, Linn County Forest Deputy, New River Aleutian Goose, and
12 Jackson Cooperative TMA. Keenan said total projects would provide almost 3.2 million
13 acres of public hunting access to private land, and improve 4,500 acres of habitat. Total
14 cost is just over \$3.5 million, with better than one-to-one cooperator match in funding,
15 for a total A&H match grant request of \$1,653,934.

16
17 Commissioner Dan Edge arrived at 1:49 p.m.

18
19 **Public Testimony:** There was no public testimony.

20
21 ***Chair Rae declared for the record, a public disclosure. At her regular job, she is***
22 ***doing work for the Oregon Forest Industries Council.***

23
24 Counselor Bill Cook noted Chair Rae's declaration for the record.

25
26 Jim Morrell said he volunteered to be a beta tester for the new map. He complimented
27 staff for doing a good job of putting the map together.

28
29 *Action: Commissioner Englund moved to approve the recommendations of the*
30 *Access and Habitat Board for project funding. Commissioner Edge seconded the*
31 *motion, and the motion carried unanimously.*

32
33 **Exhibit C: GOOSE TASK FORCE RECOMMENDATIONS**

34 Ron Anglin, Wildlife Division Administrator, said Brad Bales had prepared the *Goose*
35 *Backgrounder: Goose Management Issues in NW Oregon and SW Washington* just

1 distributed to the Commission. He said staff will come before the Commission again in
2 August with specific recommendations from the Goose Task Force.

3
4 Brad Bales, Game Bird Program Leader, said goose management issues in Northwest
5 Oregon and Southwest Washington are very complex. They are mainly for the
6 protection of the Dusky Canada Goose, which is on the decline. Until the 1970s, they
7 were the only geese that wintered in Oregon. In the 1990s, the entire Cackling geese
8 population shifted from wintering in California to Oregon. The result is agricultural
9 depredation and aviation issues. Oregon will be pursuing flyway partnerships and ask
10 for cooperation in increasing harvest rates on Cacklers to stabilize the population at
11 current levels until programs are funded to deal with the many issues. He noted there is
12 a new issue with white geese in the Snake River corridor.

13
14 **Public Testimony:**

Wayne F. Johnston Jefferson, OR	Wayne Johnston was born and raised where he farms. He asked how many Commissioners were on the Board when the Ankeny Refuge went in. The promises made to the public (concerned about the loss of tax base) never materialized; they made a big deal that Ankeny Hill paid only \$3,000 in taxes. He said Ankeny is not being farmed in a way to support the geese, and thinks the count is off by one-half in the valley. He asked the Commission to open for one year; hunting seven days a week with no bag limit, and see what happens. Then do massive changes in the farming practices of the refuge. He farms 70 acres that border the refuge on the west side. He distributed pictures that showed bare ground and goose droppings. He said when nothing is growing on the refuge; the geese come to his property. If something isn't done, the geese are going to run him out of house and home. Commissioner Edge asked if Mr. Johnston had attended any of the Task Force meetings. Johnston said no. Commissioner Edge promised he would be informed of future meetings.
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15
16 Chair Rae asked, how much cooperation staff gets from the Ankeny Refuge operations
17 and managers. Anglin said staff has asked the Willamette Valley Refuge Complex to
18 address the goose forage issues. We're doing the same thing within our management
19 plans in the Willamette Valley, to attract and hold more geese, to compensate for some
20 of the things going on. He said the Refuge Complex is not part of the Flyway Council;
21 their staff participates in the meetings.

22
23 Chair Rae asked what does staff need from the Commission before going into the
24 Flyway Council negotiations in July. Anglin said two things:

- 25 1. Give us direction to negotiate our recommendations; and

1 2. Direct us to negotiate a Cackling population that's compatible with the state of
2 Oregon.

3
4 Chair Rae asked whether the co-managers on the Council are sympathetic to Oregon's
5 issues, particularly the farmers. Anglin said members from Washington and Alaska are
6 very understanding; some are more willing than others to work on it. The Alaskan
7 natives use these birds for subsistence, and we need to be sensitive to that. He has not
8 yet spoken to the California representatives.

9
10 Chair Rae resumed **Public Testimony**.

11

Marie Gadotti Scappose, OR	Marie Gadotti, Goose Task Force member, has farmed since 1970. In the early 1980s they started getting hit by geese; now these geese are impacting farmers everywhere. We keep running into roadblocks regarding who's going to help us. We can't plant a field in the fall unless it's next to our house. This year we couldn't plant in February because of the geese. Now with three weeks of rain, it's too late. She said hunters in the 1980s are not hunting anymore because of too many regulations. What do we do next? The objective is 250,000 Cacklers but they're not counting all the other geese in the state. She doesn't want to feed them for free anymore. She asked to either get the geese off their fields or start compensating them.
Mike Berman Portland, OR	Mike Berman lives on a floating home near the Portland International Airport. Someone was eating his potted plants, so he set a trap and found it was the geese. It's a big issue on the water and an amazing amount of noise; there is no way to get around them. There are thousands of them. He said airplanes come in low and someday will hit the geese. He will take pictures and send them to the Commission.

12
13 Chair Rae said that when it comes to compensation the State of Oregon is going to be
14 hard pressed to find an appropriate source for compensation to farmers. She asked if
15 any of the \$2 million federal dollars for goose management plans are set aside for
16 compensation. Bales said no, the majority of the money went to maintaining and
17 expanding hunting programs, and direct landowner assistance from Wildlife Services to
18 help with hazing. Staff puts in requests to the congressional delegation every year.

19
20 Chair Rae said the Commission's desire for the negotiators in the Pacific Flyway
21 Council is to be as aggressive as can be to manage these numbers in such a way that
22 they get some relief for those affected by the massive damage. That means Anglin has
23 as much flexibility as he needs and to be as tough as he can be.
24

1 Anglin said USFWS Migratory Bird Section is flying out later this month to meet
2 specifically on this issue. Chair Rae offered to have them join her and Senator Betsy
3 Johnson for lunch.

4
5 Chair Rae asked Brad Bales to make sure that Wayne Johnston was on his regular
6 mailing list for future Goose Control Task Force meetings.

7
8 **Exhibit D: FISH SCREENING TASK FORCE MEMBER APPOINTMENT**

9
10 ***Chair Rae stated a potential conflict of interest in that one of the candidates may***
11 ***or may not be her cousin from Jefferson County.***

12
13 Alan Ritchey, Statewide Fish Screening Coordinator said the task force has seven
14 members who serve two-year terms. The candidates are: Mike Britton, Madras; and
15 Robert D. Jenson, Sandy. The new coordinator would replace John Benton.

16
17 ***Public Testimony:*** There was no public testimony.

18
19 Commissioner Edge liked staff's recommendation of Mike Britton; he has good
20 agricultural experience and is centrally located. Commissioner Klarquist agreed.

21
22 *Action: Commissioner Klarquist moved to appoint Mike Britton as an agricultural*
23 *representative on the Fish Screening Task Force. Commissioner Bob Webber*
24 *seconded the motion, and the motion carried unanimously.*

25
26 The Commission recessed at 2:43 p.m. and reconvened at 2:54 p.m.

27
28 **Exhibit E: BULL RUN WATER SUPPLY FISH PASSAGE WAIVER REQUEST**

29 Greg Apke, Statewide Fish Passage Program Coordinator, introduced two
30 representatives from the City of Portland's Water Bureau—Steve Kucas and Edward
31 Campbell. He said ORS fish passage statutes adopted in 2001 make provisions for
32 owners to seek a waiver from state fish passage requirements, if an alternative to fish
33 passage is provided that results in a net benefit to native migratory fish. Apke said staff
34 seeks approval in exchange for the proposed mitigation actions located in the Bull Run
35 and Sandy River Basins.

36
37 Todd Alsbury, Willamette Watershed District Fish Biologist, discussed the proposal and
38 its benefits. He described the areas on the Bull Run and Sandy River Basin, Portland
39 Water Supply System, Bull Run Dam #2, and Bull Run Dam #1 maps. He talked about
40 the types of Anadromous Native Migratory Fish and Non-anadromous species present
41 in the Bull Run River. A Habitat Conservation Plan (HCP) was developed to mitigate the
42 impacts of the City's municipal water supply operations in the Bull Run watershed. He
43 said 49 mitigation measures provide a net benefit to juvenile salmonids and adult
44 salmon and steelhead production. All the measures will provide benefits to other native
45 migratory fish present in the basin.

46
47 Apke discussed Public Comments and the three-week mandatory public notice period.

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Chair Rae asked if there are any questions.

Commissioner Klarquist said the report mentions removing a rock weir; is it feasible to altar it? Alsbury said the City plans to remove a portion of that rock weir to provide passage of three-quarters of a mile of habitat.

Commissioner Klarquist referred to Measure F4 – Little Sandy Flow Agreement (Attachment 3, page 21) and asked about the commitment to create a flow agreement within five years. Can it be established contemporaneously with the waiver, or is it necessary to have a lag period? How do we make sure it gets done as quickly as possible? Alsbury deferred his question to City of Portland staff.

Commissioner Klarquist asked about the \$93 million commitment for use over time. Most actions will take place up-front; who holds the City accountable? Alsbury said the City’s commitment and funding for those projects is front loaded to the first five years. The HCP has signed with NOAA Fisheries, who will hold them to that as will ODFW.

Commissioner Webber said this waiver goes on until an event triggers otherwise. Apke said correct; if there is no trigger event the provisions of the waiver hold fast. Alsbury said the City has a 50-year license for operations of the hydro-facilities at those dams that expire in 2029. There will be another option for staff to review this in 19 years.

Commissioner Levy expressed concern about the long-term commitment for habitat and water, and potential staff turn-over. She asked how staff will revisit this to insure that their commitments are being taken care of. Apke said the Task Force raised the same concerns; we intend to keep a good record in our system to track these commitments.

Chair Rae said her monitoring concerns were addressed under No. 8 in Attachment 4 – *Bull Run Water Supply Habitat Conservation Plan Fish Passage Waiver Agreement (W-03-0001)*. Counselor Sanders also noted No. 10 in Attachment 4 (regarding failure to maintain mitigation for duration of Agreement; invalidates this fish passage waiver).

Alsbury added that these 49 actions will be included in the Lower Columbia River Recovery Plan which also will be our measure of keeping track of this.

Public Testimony:

Ben Meyer Portland, OR	Ben Meyer, NOAA Fisheries, Branch chief of Habitat Office of National Marine Fisheries Service, has worked with many groups on development and restoration of Sandy River Basin. A subset of that plan was the development of a conservation plan for Bull Run River system. They received no opposition to the plan, and believe it is technically sound. It made sense to not require fish passage at this time. They recommend that the Commission grant the waiver.
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<p>Mike Myrick Portland, OR</p>	<p>Mike Myrick, Education Director of Association of Northwest Steelheaders (ANWS), and Watershed Chairman for the Sandy River Basin Chapter of ANWS, said they consider this our stream; we do a lot of volunteer work. ANWS has participated for 10 years helping Portland devise its HCP. ANWS feels this plan is thorough, and the science is sound. Portland adequately considered the fish passage in the Bull Run. He recommended approving the fish passage waiver.</p>
<p>Norm Ritchie Portland, OR</p>	<p>Norm Ritchie, Government Affairs Director for ANWS, said they've worked with ODFW and Portland Water Bureau to establish the best possible site to divert the hatchery fish away from the spawning habitat. They believe the site will provide good fish return diversion away from the spawning habitat and without cost to the City. He asked the City staff to site an acclimation pond within the Bull Run Basin.</p>
<p>Steve Kucas Portland, OR</p>	<p>Steve Kucas, Environmental Program Manager for the City of Portland Water Bureau, addressed the previous questions by the Commission:</p> <ul style="list-style-type: none"> • Rock weir was originally included in the waiver application. City plans to take it out completely as early as next year. • Flow agreement: When we write our measures for years one-five, we start the commitment. Staff started the commitment two years ago and is monitoring it now with last permitting. • Accountability and commitment: current City staff can't perceive how people who follow us will treat this, but the current staff is very serious about this and has to be compliance with the law. He said in 2029, ODFW's FERC license is up for renewal, so people will be able to revisit this issue then. • Commitment to the actual measures: Each of the 49 measures has a specific habitat objective. City staff has to do annual compliance reporting to show that these objectives are being met.
<p>Edward Campbell Portland, OR</p>	<p>Edward Campbell, City of Portland Resource Protection, thinks the presentations from ODFW staff have captured what the City is trying to accomplish. The Incidental Take Permit is the crux of accountability for us. We take our obligations to maintain that permit very seriously.</p>
<p>Brett Brownscombe Portland, OR</p>	<p>Brett Brownscombe, Conservation Director for The Freshwater Trust, referred to their letter in the packet and noted the only thing that has changed since the letter</p>

	(through the public process) is the position title. It's rare for the organization to support a waiver, but this is a good decision for fish recovery. Sandy River Basin is a critical area of their focus. They plan to be part of moving actions forward and seeing that the actions are being carried out.
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2 Chair Rae asked if there any further questions.

3
4 Commissioner Edge said the OARs state that the Commission “shall” grant a waiver
5 where a “net benefit” is described. There are no real options before us. Counselor
6 Sanders said your option would be to determine that there is not a net benefit. In some
7 sense, although we've tried to make this an objective standard, whether there's a net
8 benefit includes a large part of policy choice. Chair Rae clarified it's in the statutes.

9
10 *Action: Commissioner Edge moved to grant the City of Portland a waiver from*
11 *providing fish passage at the Bull Run River in exchange for the proposed*
12 *mitigation in the Sandy River Basin and authorize the Oregon Department of Fish*
13 *and Wildlife to enter into an agreement with the City to this effect. Commissioner*
14 *Klarquist seconded the motion.*

15
16 Chair Rae asked Counsel if the motion needed to specifically state the Commission
17 finds a “net benefit”, or is that assumed in the motion. Counselor Sanders said it is
18 assumed in the motion; but it wouldn't hurt to be the basis of the motion. I think it's
19 probably clear from the record that Commissioner Edge's motion is based on the
20 premise that there has been found a net benefit. Commissioner Edge said he would
21 add “*having found a net benefit*” to the end of his motion.

22
23 Commissioner Webber asked whether the motion includes that the Commission is
24 authorizing the agreement that's “*set out in Attachment 4*”, as opposed to just entering
25 into an agreement. Chair Rae said yes.

26
27 Chair Rae said to Commissioner Edge that the new motion would begin with “*Having*
28 *found a net benefit*”, and to add “...*authorizing the Chair to sign the Agreement that is*
29 *set out in Attachment 4.*” Commissioner Edge said so moved.

30
31 *Action: Commissioner Edge said the Commission having found a net benefit*
32 *moved to grant the City of Portland a waiver from providing fish passage at the*
33 *Bull Run River in exchange for the proposed mitigation in the Sandy River Basin*
34 *and authorize the Oregon Department of Fish and Wildlife to enter into an*
35 *agreement with the City to this effect and authorizing the Chair to sign the*
36 *Agreement that is set out in Attachment 4 – Bull Run Water Supply Habitat*
37 *Conservation Plan Fish Passage Waiver Agreement (W-03-0001).*

38
39 Chair Rae asked if the record was clear. Counselor Sanders said the record is clear.
40 She asked Commissioner Klarquist if he was okay by the second motion.

1 Commissioner Klarquist said yes and seconded the motion. Chair Rae took an
2 oral vote on the motion as restated in the record. The motion passed
3 unanimously.
4

5 **Exhibit F: GRASS CARP RULE EXEMPTION REQUEST**

6 Laura Tesler, Grass Carp Permit Coordinator, provided biological information on Grass
7 Carp (Carp). It is essential to obtain the right balance for stocking Carp as they will eat
8 most vegetation in a water body. She discussed the beneficial and negative impacts
9 Carp, and said the main goal of the current rule was to prevent accidental introductions
10 of Carp into natural systems. The exception request is for Lake Enterprises Reservoir,
11 a man made 13.76 acre pond located on private property near Marquam, Oregon. She
12 said the applicant Joe Rowan is asking for an exception to the size limitation of ten
13 acres. The reservoir is not in a floodplain; the main use of this pond is for waterskiing.
14 Lake Enterprises states the aquatic weed growth is impacting the aesthetic and
15 waterskiing properties of their reservoir. The applicant submitted an application and a
16 certified engineering plan that indicated the entire perimeter of the water body shows all
17 points of water movement in and out of the water body. Staff conducted a site visit on
18 March 25 and determined that the topographic survey is correct.
19

20 **Public Testimony:** There was no public testimony.
21

22 Commissioner Englund noted that the applicant put quarter-inch screen on the outlet.
23 Tesler said a more correct description would be emergency drain that has a manual pull
24 at the bottom. Commissioner Englund said a quarter inch screen in that size of water
25 with an emergency issue is fairly fine screen for that size of water. Tesler agreed.
26

27 Joe Rowan said the freeboard in the lake is almost five feet. The overflow at five feet
28 below the freeboard is an eight-inch pipe with a two-inch cap over it that goes below the
29 water line in order to alleviate debris from getting in the overflow. In the 1996 flood, we
30 had no overflow of the lake whatsoever.
31

32 *Action: Commissioner Edge moved to approve the exception for Grass Carp as*
33 *provided by staff. Commissioner Levy seconded the motion, and the motion*
34 *carried unanimously.*
35

36 **Exhibit G: LIMITED ENTRY ANCHOVY PETITION**

37
38 **Commissioner Jon Englund declared a potential conflict of interest since there is**
39 **a possibility that equipment could be purchased from his establishment.**
40

41 Chair Rae noted for the record Commissioner's Englund potential conflict of interest.
42

43 Gway Kirchner, Marine Fisheries Section Manager, said current regulations allow
44 commercial harvest of ocean food fish in inland waters with hook and line only, with the
45 exception of the Columbia River and the Umpqua River. The Department allows vessels
46 to harvest anchovies for bait for use on their own vessel and in select bays from July 1
47 through October 31. She said the Department received the first Petition on October 23,

1 2009 to allow harvest of anchovies in inland waters in the Yaquina River under a permit
 2 system to be sold as live bait; it was denied by the Commission at their January 8, 2010
 3 meeting. The second Petition received on February 15 had a few changes; however,
 4 the Petitioner withdrew his second Petition on April 20 and resubmitted it on April 22
 5 with no changes (Attachment 2). She said the current Petition proposes to allow one
 6 permit issued to a licensed bait dealer to harvest anchovies being sold as live bait in
 7 Yaquina Bay. She discussed changes in the current petition:

- 9 1. Instead of starting May 1, start May 15 and continue through October 31.
- 10 2. Eliminate full limited entry permit; requests a three-year temporary permit.
- 11 3. Previous petition allowed lampara net per seine and hook and line. Hook and line
 12 is already a legal commercial gear for anchovies in Yaquina Bay. The current
 13 permit is restricted to Lampara Net only.

14
 15 Kirchner said staff's concerns are no different than when this same issue was discussed
 16 in January 2010 - the impacts to juvenile salmonids.

17
 18 **Public Testimony:**

<p>Richard Wood South Beach, OR</p>	<p>Richard Wood, owner of Yaquina Bait Company and the Petitioner, said after he read the Commission's January minutes he changed his Petition and eliminated the limited entry. He's also asking the Commission for a three-year temporary usage permit so the Commission can determine if this is a viable process or not. Wood distributed a copy of his Petition (his Exhibit A) and said he was flexible with regard to any changes.</p> <p>Chair Rae asked if Wood's handout was completely different from his submitted petition in the Commission packet. Wood said he took out the "limited permit" and changed the dates to fit the season.</p> <p>He referred to his handout and discussed the Color Twinscope (page 1), his satellite hookup (page 2), and the size of boats in the bait seine fisheries of Oregon and the Lampara Net Fishery (page 3). He noted the signature lists by tuna and bait boats and people in support of his petition. There are about 220 boats on the list; 10 of which are considering doing live bait and they have a Lampara Net. He would like to lessen the impact not only for local boats but for boats from out of town.</p> <p>Chair Rae asked Wood what he thinks has changed since the Commission last denied this Petition. Why is it so important that he fish in the bay instead of where you're fishing now in the ocean? Wood said bait boats prefer seasoned bait; it's a hardier fish and lasts longer. I'm not</p>
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	<p>saying that we will not fish them in the ocean and bring them into the bay and sell them but it helps to be able to do both. The ocean is very extreme and takes big equipment and bigger nets.</p>
<p>Bret Hamick</p>	<p>Bret Hamick, Petitioner, said management of the fishery takes dollars to make it work. On the landing tax, he and his wife own a fish company and buy substantial amounts of Dungeness Crab; the crab tax is \$.0225. To help support this revenue could be developed from a landing tax for anchovies and possibly other vessels would be willing to give \$.01 cent per pound on what they land; these guys have to go all the way to Washington to buy bait so it would be cheaper for them. Hamick said it's lawful for other vessels not from our community to come in and fish.</p> <p>Chair Rae said you are saying that out of state people can come in and do what you want the Commission to allow you to do? Hamick said that's not correct. He said other vessels come in under the supervision of ODFW and use a Lampara Net to seine their own. Trying to start a business to do this and manage this fishery and to do it properly under the supervision of Oregon State Police and ODFW – we are running into some fences. The other vessels can come in and fish using the same gear but we are not able to. If they strip our resources they can pull out. They're already allowed to fish, so what about a temporary permit to sell? He said with good management, fishing and practice this could be a viable fishery; we could make it work.</p>

1
2 Commissioner Klarquist referred to the out of state people allowed to fish in certain bays
3 for anchovies and asked what is the difference in the way they fish for the anchovies; is
4 the difference in technique and volume. Hamick said there is no regulation set on the
5 length of the Lampara Net. Mr. Wood has asked that we can set regulations on the net.
6 Commissioner Klarquist said so you would use the same technique as the ones who are
7 now fishing? Hamick said correct. Commissioner Klarquist asked how that volume
8 would differ from the volume you would anticipate if you were to do this. Hamick said
9 the volume would be different because it would be something we'd do on a day-by-day
10 basis, or it could be that ODFW only regulates us to fish certain days; fisheries cannot
11 work unless their managed. The point is not that we're all using the same gear; it's if
12 someone comes in and sees a big school of fish they're not going to be as careful to
13 protect our resources as somebody that lives there that has a business.
14
15 Chair Rae said this is preview into our future where the Commission and the staff are
16 asked to take on either developmental fisheries or limited permit systems for a very
17 small percentage of the population, and making certain that those priorities are

1 consistent with our statutory mission regardless of funding source. She predicted that
2 the Commission will get lots of requests in the future that will say, we want you to take
3 on more, and the Commission is going to have to say that it doesn't rate up on our list of
4 things to be concerned about. It's going to be even more and more critical for our OSP
5 enforcement. We have new realities to face and this may indeed be one of those.

6
7 Commissioner Kerns disagreed. He talked about the Department's revenue. He said if
8 the State is going to balance its budget, the Commission needs to support such
9 industries. He supports this Petition.

10
11 Commissioner Englund discussed bait boats that arrive in August and September and
12 their process and gear to catch bait. He is voting for the Petition this time because of the
13 equipment issue. While not a fan of creating more limited entry this is only for a three
14 year permit. He believes the petitioners know how to make log books and will use the
15 right equipment to run their business. There are plenty of anchovies and the time is
16 excellent because the PFMC just opened the coast for more salmon fishing and fresh
17 bait in a big deal, especially on the Columbia River.

18
19 Chair Rae said if a majority of the Commission were to allow the Petition that is the first
20 step in a process where actual rules have to be drafted provided under the
21 Administrative Procedures Act, and public comments be given on the specific rules.
22 Counselor Sanders said right. He said Wood has provided language that would be the
23 initial draft of the rules that the Commission would put out. The Commission is not
24 restricted to those rules and could substitute its own set of rules if they wanted to put
25 them out for public comment. Your basic comment is correct; this would be the first
26 step in the process of formal rulemaking.

27
28 Chair Rae clarified that's a 90-day process by statute. Counselor Sanders said it could
29 be done in less if the Department filed by June 15, they would publish on July 1 but
30 there's no July Commission meeting so the August meeting would be the first meeting
31 at which the Commission could take action to adopt these rules. Chair Rae said we
32 have a meeting in July but I've asked that it be limited to the budget. Counselor
33 Sanders thought that would be too early - July 15 or 16. He said it has to be twenty-one
34 days after publication of the Secretary of State's notice on the first of July.

35
36 Commissioner Edge clarified that there would be no guarantee that Mr. Wood would be
37 the one to receive the permit. Counselor Sanders said the rule does not specify now
38 how that one permittee would be selected. Strictly, the Department has done it either by
39 catch records or lottery; there is no particular way that permit would be assigned.

40
41 Chair Rae said one permit in a limited entry is a lot like to me development fisheries
42 which we've been unfunded for.

43
44 Commissioner Webber said he was asking for rules for temporary permits not limited
45 entry; which would mean anybody who applied could go fill that permit? Counselor
46 Sanders said no, although he hasn't used the term limited entry it would still be a limited
47 entry fishery. There would only be one permit permitted no matter how many applicants

1 there were. We limit the entry of the number of persons authorized to go after the
2 fishery. It's temporary in the sense that the rule now would have to end after three
3 years. That's gets to the developmental fisheries point that the Chair was making.
4 Commissioner Webber said the Commission would do this for just Yaquina Bay; but not
5 Tillamook or Coos Bay? Counselor Sanders said in the rulemaking process you could
6 expand it or narrow it as you go through the rulemaking process.

7
8 Commissioner Levy said the papers in the Commission packet state: temporary new
9 rules; temporary three year limited permit, one permit available. That's his suggestion,
10 not ours. She asked if the Commission voted, whether they could change it to what was
11 in Wood's handout today and state either temporary inland anchovy bait temporary
12 permit available in Yaquina Bay, where it doesn't say limited. Counselor Sanders said
13 the Commission could change that; but, could not formally bind themselves now to what
14 the final rule will be. You're not obligated to publish the rule language he has proposed.

15
16 Commissioner Edge said he's not compelled by the revised arguments. He thinks it's
17 crazy to offer a fishery for a single permit – it sets a bad precedent. He believes the
18 Department will have resource problems in managing current fisheries. He agreed with
19 Chair Rae that the Commission would likely get lots of requests of this type if they go
20 down this road. He supports staff's concern about the juvenile salmonids. He said given
21 our salmon population we should maintain a high vigilance for that.

22
23 Deputy Director Melcher said the Commission was looking at a Petition and not a
24 rulemaking; the process would determine whether that's done in August or September.
25 He said the Developmental Fisheries Program that was designed to address the public
26 interest in developing fisheries in a limited way was defunded by the 2009 Legislature.
27 Staff came before the Commission and suspended their work in developmental
28 fisheries. Melcher said the Commission can't just pick one person. If the Commission
29 goes down this path knowing that we've abandoned the developmental fisheries
30 approach of intense management and in constraining development of fisheries and tells
31 staff to initiate rulemaking, then we need to take the open access approach and open
32 the fishery and let it develop it on its own with adjustments and reactions as needed.
33 He said that's different than picking one individual or figuring out the process to pick
34 one. He guaranteed that the Commission will have this discussion in every other bay
35 where there are developed fisheries. The current rule allows vessels to come in and
36 catch bait for their own use. These vessels have said that they want to come to Oregon
37 to deliver their catch; they're not coming because they can't catch their own bait. The
38 Commission adopted rules allowing them to do that.

39
40 Chair Rae said she sticks by her view that this is not the time to take on new programs.

41
42 Commissioner Englund asked if the Commission is voting on the single temporary
43 permit or on a limited entry.

44
45 Chair Rae said it depends on Commissioner Kern's motion and how he chooses to
46 phrase that. She said where the Commission is positioned under the Administrative
47 Procedures Act you vote to accept the Petition and direct the Department to initiate

1 rulemaking. That's where you to either allow one or all. She asked Counselor Sanders
2 if that's the motion. Counselor Sanders said correct; the current Petition is restricted to
3 one permit. So, it's a limited entry fishery if the Commission adopts the Petition as it
4 has been submitted to you. He said the Commission could vote to initiate rulemaking
5 and then ask the staff to tinker with the proposal before it's actually published.

6
7 *Action: Commissioner Kerns moved to accept Mr. Wood's petition submitted not*
8 *for the limited entry but to open it up to anyone that wishes.*

9
10 Chair Rae said to facilitate Commissioner Kerns' request he moves to accept the
11 Petition and directs the Department to initiate rulemaking that would allow open access;
12 not a limited entry fishery.

13
14 Counselor Steve Sanders said that's how he understood the motion. Chair Rae asked
15 Commissioner Kerns if that's what he meant; he said yes. She asked Counselor
16 Sanders if that was clear for his record. Counselor Sanders clarified that it would be
17 accepting the Petition with no limit on the number of permits, or the proposed
18 rulemaking.

19
20 Commissioner Englund said open access for one permit; open access to the fishery. He
21 said when you open it wide open he has a problem with that. I don't have a problem
22 with the termination on it; it's a developmental fisheries issue.

23
24 Chair Rae said that is going to be the test of resources and the new reality of public
25 services. We're going to be asked to do a lot when we can't fund core services – this is
26 a peek into our future.

27
28 Chair Rae declared Commissioner Kern's motion dead for lack of a second motion. She
29 asked him for a different motion.

30
31 *Action: Commissioner Kerns moved to approve Mr. Wood's Petition on a limited*
32 *entry.*

33
34 Chair Rae asked Counsel if the motion was acceptable. Counselor Sanders said yes,
35 this would be accepting the Petition as it is with a focus that one permit would be
36 granted realizing that the Commission is not bound by that but that would be the rule the
37 Department would publish. Chair Rae asked for a second.

38
39 *Commissioner Englund seconded the motion.*

40
41 Chair Rae said we are perilously close to Developmental Fisheries and the Legislature
42 could not have been clearer and we could not have been clearer that we're not going to
43 do it - it's up to the Legislature. She said all in favor of the motion to allow the Petition
44 and rulemaking process for one permit vote by saying "aye". All opposed signify by
45 saying "no".

1 *Voting aye were Kerns, Englund and Levy. Voting nay were Webber, Klarquist,*
2 *Edge and Chair Rae. Motion died by a vote of 3-to-4.*

3
4 *Action: Commissioner Edge moved to deny the Petition submitted by Mr.*
5 *Richard Wood and director the Director to notify the petitioner of the*
6 *Commission's decision in writing. Commissioner Webber seconded the motion,*
7 *and the motion carried Edge, Klarquist, Webber, Chair Rae, Opposed Kerns,*
8 *Englund and Levy. The motion passed by a vote of 4-to-3.*

9
10 Chair Rae thanked Richard Wood for his patience with the Commission.

11
12 **ADJOURN**

13 Chair Rae said the Commission would have a full day tomorrow. During the Big Game
14 Regulations presentation she would have separate testimony for Big Game Regulations
15 from Hunter Orange. We will have a series of declarations of potential conflicts for the
16 record.

17
18 Chair Rae adjourned the meeting at 4:58 p.m. and said the Commission was recessed
19 until tomorrow.
20