



Oregon Fish and Wildlife Commission Minutes

Meeting:
January 7, 2011
Oregon Department of Fish and Wildlife
Commission Room
3406 Cherry Avenue
Salem, Oregon 97303

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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 | Curt Melcher, Deputy Director |
| Dan Edge, Vice-Chair | Debbie Colbert, Deputy Director |
| Jon Englund, Commissioner | Bill Cook, Assistant Attorney General |
| Skip Klarquist, Commissioner | Steve Sanders, Assistant Attorney General |
| Carter Kerns, Commissioner | Teri Kucera, Executive Assistant |
| Bob Webber, Commissioner | |

MEETING

On Friday, January 7, 2011 at 8:00 a.m., Chair Marla Rae called the Oregon Fish and Wildlife Commission (the Commission) meeting to order. She noted for the record that Commissioners Bobby Levy and Jon Englund were excused today. She sadly noted the passing of Bonnie Bean, Director Roy Elicker's loving spouse. Director Elicker is on bereavement leave and Deputy Director Curt Melcher is with the Commission today.

Chair Rae said in the past when the Commission held meetings in other congressional districts, they had opportunity to go on tours in connection with those meetings. This year the Commission will meet in Florence, Seaside and Pendleton. Under the circumstances of the budget she recommended not investing staff and financial resources, at least for 2011, to put together road tours; the Commission agreed.

DIRECTOR'S REPORT

Field Reports (see written reports)

Deputy Director Melcher noted two deviations from standard procedure. Captain Jeff Samuels, Oregon State Police, will use a PowerPoint to show photos of their new patrol vessel. Secondly, the Columbia River report will be given as a separate report

Northeast Region

Craig Ely, Region Manager, gave a progress report on the Northeast Oregon Chinook Hatchery Supplementation program; the transition to local broodstock has been successful. He provided an update on the Wolf Plan; the recommended changes to the plan are available on ODFW's website. Staff met with 36 county sheriffs to discuss their involvement in the Plan implementation. Ely said staff continues to monitor two packs of wolves; and staff biologists continue to receive wolf reports. Staff were attempting to

1 document a pair of wolves reported feeding on elk around Ukiah. Also, just south of
2 LaGrande, staff has received reports of wolves around the Union and Hot Lake area.

3
4 High Desert Region

5 Chip Dale, Region Manager, said from November 30 through December 2; staff
6 successfully trans-located Bighorn Sheep from two locations to three different sites. He
7 discussed the implementation of the Summer Lake Wetland Habitat Improvements
8 project. Dale said over 4,000 acres of decadent and closed in wetlands have been
9 rejuvenated. Staff has observed a very positive response for water-bird use during
10 migration staging and breeding seasons.

11
12 Southwest Region

13 Larry Cooper, Region Manager, said after 16 years staff was able to open the wild coho
14 fishery at Tenmile Lake; it was well received by anglers and local communities. He
15 discussed statistics of a recent increase in bear damage complaints. Josephine County
16 saw an almost three-fold increase in complaints; and Douglas County a five-fold
17 increase. He said bears have discovered that vineyard grapes are very tasty; they are
18 attracted to the high sugar content and can descimate a crop overnight.

19
20 Commissioner Kerns remember that eight years ago the Commission toured Calapooia
21 Creek about a study being done that involved taking DNA to determine the ability of wild
22 versus hatchery fish. He asked to see the results of that study. Cooper agreed to do so.

23
24 Northwest Region

25 Chris Wheaton, Region Manager, said over 1,000 individuals signed up for the winter elk
26 feeding tours in the Jewell Meadows Wildlife Area. He said winter steelhead fishing has
27 been good. He also discussed 2010 Coho salmon return counts on the Oregon coast; a
28 0.9 mile stretch of Leitel Creek had 2,149 live coho or coho carcasses counted in a
29 single survey last month; one of the highest wild coho counts ever in Oregon.

30
31 Deputy Director Melcher said Laura Tesler is standing in for Holly Michael, who was at
32 the Western Association of Fish and Wildlife Agencies (WAFWA) Mid-Winter meeting.

33
34 Information & Education

35 Roger Fuhrman, Administrator, discussed gift marketing efforts by ODFW during the
36 holiday season. He said staff will work with the Oregon Marine Board (OMB) on a
37 cooperative effort involving renewal reminders that OMB will send to 50,000 to 60,000
38 boaters encouraging them to renew their licenses and boating registration. Staff will
39 work also with OMB at the Sport Fishing Boat Show, and the 2011 Pacific Northwest
40 Sportsmen's Show in Portland. He said last month, Mark Duda, Executive Director of
41 Responsive Management, shared with staff the results of recent public opinion research
42 projects; hunting and fishing access. Fuhrman highlighted the results of the two studies.

43
44 Conservation Strategy

45 Laura Tesler, Wildlife Mitigation Coordinator, discussed the Willamette Wildlife Mitigation
46 program in light of the signed Willamette Basin Mitigation Memorandum of Agreement
47 (MOA) between ODFW and Bonneville Power Administration (BPA). ODFW will prioritize

1 in directing these expenditures; and is working towards program capacity; the program
2 will fully ramp up in 2013. She said a stakeholder advisory group will be established to
3 assist with project selection criteria; meetings with interested parties have taken place.
4 Staff has looked at projects currently being funded by BPA and several potential
5 acquisition properties for the program that could be leveraged in 2011.

6 7 Oregon State Police – Fish and Wildlife Division

8 Deputy Director Melcher said Lieutenant David Anderson would actually report.
9 Lieutenant Anderson, Oregon State Police (OSP) Fisheries Manager, said OSP has a
10 new member to its fleet – a 50-foot patrol vessel called the Guardian that was purchased
11 with federal funds in September 2010. After OSP made modifications to the vessel, it
12 was back in the water November 19, 2010. Currently, the Guardian is in the midst of its
13 first coast wide patrol that began last week that resulted in a number of pulled and seized
14 crab pots. He showed a slide show of the Guardian in action in Oregon coastal waters.
15

16 Deputy Director Melcher noted that a separate handout, *2011 Spring Chinook Fisheries*
17 *on the Mainstem Columbia River* and *2011 White Sturgeon Fisheries on the Mainstem*
18 *Columbia and Willamette Rivers*, was just distributed for the next report.
19

20 **Spring and Summer Chinook and Sturgeon Update**

21 Steve Williams, Assistant Fish Division Administrator, provided details on run size
22 forecasts.
23

24 *2011 Spring Chinook Fisheries on the mainstem Columbia River.*

- 25 • Upper Columbia River Spring Chinook is 198,400 fish.
- 26 • Willamette spring forecast is 104,000 spring Chinook; staff anticipates two fish a
27 day; seven days a week marked selective fishery.
- 28 • *U.S. v. Oregon* obligations regarding the Columbia River: manage for an equal
29 catch between Tribal and Non-Tribal fishers (catch balancing), and manage for at
30 least a 30% buffer on the run-size forecast. Staff thinks that 30% buffer is
31 appropriate. We have a smaller run size forecast; historically more accurate.
- 32 • Staff will begin season planning using a run size estimate of 138,880 fish;
33 assuming 11,527 upriver Spring Chinook available for harvest: 9,400 for sport
34 fisheries and 2,127 for commercial fisheries. Adding in the Lower Columbia River
35 Spring Chinook in the Willamette run forecast, the potential catch could be 13,000
36 for sport fishery and 6,500 for commercial fishery. The 2010 forecast was higher;
37 we have a substantial reduction this year that will take some planning efforts.
38

39 *Select Areas in Youngs Bay, Blind Slough/Knapp Slough, Tongue Point and Deep River.*

- 40 • Expected return this year is 13,000 fish; very good harvest anticipated in the
41 Select areas commercially as well as sport fishing.
42

43 Williams said staff began discussions with the public in December, and will meet with
44 sports and commercial advisors on January 11 in Rainier and Vancouver, Washington.
45 Staff will return to the Commission regarding the mainstem Columbia River season
46 structures on February 4 and ask for guidance to take to the Columbia River Compact on
47 February 8, when the Columbia River season structures and dates will be decided.

1
2 2011 Summer Chinook Fisheries on the mainstem Columbia River. Williams said
3 WDFW proposed to use summer Chinook natural escapement goal for Wenatchee and
4 Okanagan systems all in the upper Columbia. These new escapement goals are being
5 reviewed by the co-managers in the *U.S. v Oregon* and are expected to be adopted by
6 the *U.S. v Oregon* parties in 2011 to accommodate the Colville Tribes' new Chief Joseph
7 Hatchery. The initiation of these new goals will require adjustments to the harvest matrix
8 to accommodate them. WDFW staff will brief their Commission tomorrow on a proposed
9 summer Chinook policy for 2011-2013 with potential for final adoption at their February
10 4-5 meeting. The biggest issue is harvest sharing; the current policy states that the
11 available fish for harvest below Priest Rapids Dam is to be split 50-50 between sport and
12 commercial. He said the basic premise with the policy is that with Chief Joseph Hatchery
13 coming on line there will be more fish available for harvest. The hatchery will not be
14 completed until 2012, and the first production isn't going to return until 2016. He noted in
15 the handout some math with implications if staff implemented the policy now in 2013
16 before those fish arrive. Staff believes maintaining the status quo for 2011-2013 is
17 appropriate, until some results are seen from Chief Joseph Hatchery.
18

19 Tony Nigro, Ocean Salmon and Columbia River Program Manager, reported on staff's
20 sturgeon conservation planning for 2011. A draft plan has been completed that staff is
21 reviewing with advisors, stakeholders, and the public, which will be submitted to the
22 Independent Multi-disciplinary Science Team (IMST) for review. Staff will bring the draft
23 plan before the Commission in April. Much of the work in developing the plan has
24 provided a conservation and analytical basis for fisheries planning in 2011 and beyond.
25 Recently, staff has worked with WDFW to develop the key elements of the fisheries
26 management accord that will guide planning in 2011 and beyond.
27

28 Nigro said staff has seen declines in legal and sub-legal sturgeon populations. These
29 concerns have been amplified in recent years with the emergence of Stellar and
30 California sea lions as potentially significant predators on brood stock sturgeon in the
31 Bonneville Dam area, and because of the uncertainty surrounding our estimates of how
32 many sturgeon we're losing annually to sea lions. In 2010 staff reduced the sturgeon
33 management guideline from 40,000 to 24,000 fish annually as a precaution while
34 completing analysis of white sturgeon viability as part of our conservation policy. Nigro
35 said staff is confident that these declines don't pose a significant conservation risk to the
36 population at this time. The modeling developed by has helped staff to project how far
37 we think the trend in abundance is going to be in the future. Based on this projection, for
38 2011 staff has indentified an annual harvest of 17,000 legal-sized fish.
39

40 Commissioner Edge referred to the inaccuracy in run forecasts and asked if anything
41 new was coming out that might be better at predicting the forecasts in the future.
42 Williams said a lot of people and staff are working to improve those estimates and
43 indicators; with a smaller run size forecast this year the accuracy should improve.
44

45 Commissioner Klarquist asked if anyone has ever done any mathematical projections of
46 how many fish each sea lion is eating. Williams said work has been done through Robyn

1 Brown's program and the U.S. Army Corp of Engineers' observation work at Bonneville
2 Dam; there is lack of good observational data except in the area around Bonneville Dam.

3
4 Commissioner Klarquist noted that 100 sea lions had for six weeks been observed at the
5 dam. Mathematically, if the numbers quoted in the paper are that we observe them
6 taking 4,000 salmon during the course of the season that's one fish a day for each sea
7 lion. There is no way they gain several hundred pounds just eating one fish a day. He
8 asked if staff could do an inferential analysis to make some estimate of what they must
9 be consuming in order to gain the weight that they do over the course of time that they
10 are there. He said that would probably indicate that they are taking quite a bit of the
11 sturgeon; we can't observe their entire take. Williams said some of that information is in
12 the materials that staff prepares each year for the letter of authorization. He agreed to
13 send that information to Commissioner Klarquist.

14
15 Commissioner Klarquist did not want the judicial system to believe that 4,000 salmon is
16 the number of take or whatever it is; it can't be that many. Williams said one of the main
17 points that staff makes when they do use those numbers is that these numbers are
18 generated in an extremely small area right below Bonneville Dam.

19
20 Deputy Director Melcher said with regard to the run forecast uncertainty it highlights the
21 need for flexibility to conduct inseason management. One of our and the Commission's
22 fundamental objectives has always been to provide a stable predictable season. When
23 you don't have predictable runs it makes it difficult to achieve that objective and we have
24 to use inseason management to stay within all of our management guideline
25 commitments both under the Endangered Species Act (ESA) as well as per sharing
26 agreements. We do have a very good record of not exceeding and of staying within our
27 management guidelines despite the uncertainty in run forecasts.

28
29 Commissioner Edge noted also the importance of the buffer that the Commission put into
30 place. He said it has given us that flexibility to manage inseason.

31 32 **Expenditure Report**

33 Debbie Colbert, Deputy Director for Administration, referred to *ODFW Monthly Report for*
34 *2009-11 Biennium though November 30, 2010* and said Department-wide, revenues and
35 expenditures are within budgeted projections. She noted one change in the report from
36 the last meeting. An increase of \$5.7 million in federal fund limitation that was approved
37 at the September E-Board meeting; that request was related to additional Pittman
38 Robertson funds that ODFW received through U.S. Fish and Wildlife Service (USFWS)
39 for on the ground habitat projects; and Mitchell Act funds through NOAA. For ODFW's
40 2011-2013 budget, staff is waiting for direction from the Governor-Elect in terms of his
41 February 1 Governor's Recommended Budget. Natural Resources agencies were given
42 permission to work on an Enterprise Budget for General Fund, Lottery Fund, and some
43 of the Pacific Salmon Coast Recovery Funds that was submitted to the Governor-Elect;
44 we await word on whether that was approved.

45
46 Commissioner Edge thanked Debbie and noted that for the first time the report shows
47 columns where adjustments have resulted in downward adjustments; negative changes.

1
2 **Adopt Temporary Rules**

3 Deputy Director Melcher asked the Commission to adopt the ten temporary
4 administrative rules in the agenda (see pages 1-3).

5
6 Chair Rae noted temporary administrative rule No. 7, **635-049-0025**, concerning the
7 import, export, transport of cervids among licensed facilities; always an issue around the
8 holiday time and reindeer. She also noted No. 10, **635-170-0015**, the Five Year review
9 of the Bear Management Plan (BMP). She noted pending litigation that would require the
10 Commission to do the BMP update within any time certain, and said there are several
11 other management plans where the Commission has self-imposed a review deadline.
12 Under the circumstances in the future and the ability to put resources where they are
13 most needed, these reviews and management plans will be on an as needed basis and
14 as required, as opposed to self-inflicted mandatory deadlines.

15
16 Commissioner Edge referred to **635-017-0015** and reiterated the Commission's
17 commitment to doing plans as needed and appropriate as opposed to a time schedule.
18 He said it may actually be a shorter time schedule; this is a very appropriate rule.

19
20 Commissioner Webber referred to temporary rule No. 2, **635-005-0045**, closure of
21 commercial crabbing from Cape Blanco to the Rogue River by Port Orford, and where he
22 lives. He's gotten nothing but positive comments about the Department stepping in and
23 actually doing this as opposed to the fisherman having gentleman's agreements in the
24 past which lasted about ten seconds or ten feet; whichever came first as far as breaking
25 them. He said they were very supportive of that. Chair Rae said that is good feedback.

26
27 **1. 635-004-0019**

28 **Inseason Actions Implemented by the Federal Government for Commercial**
29 **Groundfish Fisheries**

30 Adopted December 3, 2010; effective "Upon Filing" - December 7, through
31 December 31, 2010.

32 Amended rule adopts in-season actions implemented by the federal government for
33 Pacific Ocean commercial groundfish fisheries, including changes to cumulative trip
34 limits and RCA boundaries for limited entry non-whiting trawl fisheries and cumulative
35 trip limits for commercial fixed gear fisheries.

36
37 **2. 635-005-0045**

38 **Inseason Closure to Commercial Dungeness Crab Fishing from Cape Blanco**
39 **South to the Rogue River**

40 Adopted December 8, 2010; effective December 10, 2010 through February 16, 2011.

41 Amended rule implements an inseason closed area to commercial Dungeness crab from
42 Cape Blanco to the mouth of the Rogue River from December 10, 2010 through January
43 15, 2011. The closed area was of known low quality commercial crab. This closure will
44 protect the portion of the fishing fleet that chooses to wait to fish the closed area by
45 implementing a 30-day fair start provision.

1 **3. 635-006-1095**

2 **Medical Transfers of Bay Clam Dive Permits Allowed**

3 Adopted December 14, 2010; effective December 15, 2010 through June 12, 2011.

4 Amended rule allows the transfer of all commercial Bay Clam Dive Permits, both
5 individual and vessel, due to current medical conditions of the permit holder. Rules
6 previously allowed transfers due to medical conditions for Individual Bay Clam Permits
7 only. Transfers are allowed for up to 90 days upon petition by the permittee.

8
9 **4. 635-017-0095**

10 **Recreational Sturgeon Fisheries In the Willamette River Downstream of Willamette**
11 **Falls Close**

12 Adopted December 17, 2010; effective January 1, 2011 through June 29, 2011.

13 Amended rule closes the recreational white sturgeon fishery in the Willamette River
14 downstream of Willamette Falls, including Multnomah Channel and the Gilbert River.
15 This action is needed to provide flexibility in season structure following Oregon Fish and
16 Wildlife Commission white sturgeon policy guidance which should be available in
17 February 2011.

18
19 **5. 635-023-0095**

20 **Columbia River Mainstem Recreational Sturgeon Fisheries Modified**

21 Adopted December 17, 2010; effective January 1, 2011 through June 29, 2011.

22 Amended rule modifies the recreational white sturgeon fishing season in the Columbia
23 River downstream from Bonneville Dam; and from McNary Dam upstream to the Oregon/
24 Washington Border effective January 1, 2011. These modifications close a known
25 sturgeon concentration area (below Bonneville Dam) to angling in order to protect the
26 resource and to provide concurrent regulations with Washington (above McNary Dam).

27
28 **6. 635-042-0135**

29 **Columbia River Commercial Sturgeon Seasons Set for January and February 2011**
30 **Below Bonneville Dam**

31 Adopted December 17, 2010; effective January 15, 2011 through July 13, 2011.

32 Amended rule implements winter commercial white sturgeon seasons in the Columbia
33 River below Bonneville Dam using gill nets. The fishing periods are: 6:00 p.m. Tuesday,
34 January 18 to 6:00 p.m. Wednesday, January 19, 2011 (24 hours); 6:00 p.m. Tuesday,
35 January 25 to 6:00 p.m. Wednesday, January 26, 2011 (24 hours); 6:00 p.m. Tuesday,
36 February 1 to 6:00 p.m. Wednesday, February 2, 2011 (24 hours); and 6:00 p.m.
37 Tuesday, February 8 to 6:00 p.m. Wednesday, February 9, 2011 (24 hours).

38
39 **7. 635-049-0025**

40 **Import, Export, Transport other than to Licensed Facilities**

41 **635-049-0265**

42 **Transport of Cervids among Licensed Facilities**

43 Adopted December 23, 2010; effective January 1, 2011 through June 27, 2011.

44 This rule amendment will allow fallow deer that leave Oregon temporarily for educational
45 or display purpose to return to Oregon. Following the permanent rulemaking process,
46 rather than taking this temporary rulemaking action, would result in serious prejudice to a
47 small business owner in Oregon that has scheduled events outside of the state requiring

1 the transport of fallow deer to these events. This temporary rulemaking action would
2 avoid these consequences by allowing the transport of the deer when conditions
3 specified by the department are met. The rule would also add a new requirement
4 applicable to export/import of fallow deer and reindeer.
5

6 **8. 635-004-0019**

7 **Inseason Actions and Management Measures Implemented by the Federal**
8 **Government for Commercial Groundfish Fisheries**

9 Adopted December 28, 2010; effective January 1, 2011 through January 31, 2011.

10 Amended rule adopts in-season actions and new management measures implemented
11 by the federal government for Pacific ocean commercial groundfish fisheries, including
12 but not limited to: (a) temporary closure of the limited entry trawl fishery; (b) replacement
13 of previously used trip limit tables for limited entry trawl gear with incidental landing
14 allowances for vessels registered to a Federal limited entry trawl permit and using
15 groundfish trawl or groundfish non-trawl gears to harvest individual fishing quota (IFQ)
16 species; (c) adjustment of the trawl RCA; and (d) adjustments to RCAs and cumulative
17 trip limits for the limited entry and open access fixed-gear fisheries.
18

19 **9. 635-018-0090**

20 **Hood River Sport Coho and Steelhead Fisheries**

21 Adopted December 27, 2010; effective January 1, 2011 through June 29, 2011.

22 Amended rule allows the sport harvest of adipose fin-clipped Coho salmon and adipose
23 fin-clipped steelhead in the Hood River beginning January 1, 2011. Further
24 modifications adjust angling deadlines following the removal of Powerdale Dam last fall.
25 Bag limits of 2 adult salmon or steelhead per day, 20 per year and 5 jack salmon per
26 day, 2 daily limits in possession; with the exception that one additional adipose fin-
27 clipped steelhead may be retained per day for a total aggregate of 3 adult fish harvested
28 daily are already set by permanent rules for the Central Zone.
29

30 **10. 635-170-0015**

31 **Five Year Review**

32 Adopted December 29, 2010; effective December 29, 2010 through May 28, 2011.

33 The process of updating and review of the Bear Management Plan is currently
34 underway. This extensive process, which will involve scientific and policy analysis,
35 stakeholder involvement and public notice and comment, is expected to result in a final
36 decision by the Commission in December 2011. From a policy perspective, the need to
37 self impose a deadline to conduct this process is unnecessary. It is more prudent to
38 review and update the plan when needed. By repealing the rule now via temporary rule
39 (rather than waiting several months to repeal it through permanent rulemaking), the
40 Department would avoid the lawsuit and make clear that it no longer favors arbitrary
41 deadlines for update and review of bear plans. Meanwhile, the Department and
42 Commission would move forward to update and review the current plan. This would
43 devote scarce public resources to the plan update and review process, rather than to
44 litigation.
45

46 *Action: Commissioner Edge moved to approve the ten administrative temporary*
47 *rules. Commissioner Webber seconded the motion, and the motion carried*

1 *unanimously by an aye vote from Commissioners Webber, Klarquist, Kerns, Edge*
2 *and Chair Rae.*

3
4 **PUBLIC FORUM.** There were no sign ups for the Public Forum.

5
6 **Exhibit A: COMMISSION MINUTES**

7 Chair Rae asked the Commission for any edits to the September 30 and December 3,
8 2010 draft minutes. She noted a new copy of abbreviated minutes of their September 30
9 meeting in Bend; specifically, changes to summarized public testimony on page 5.

10
11 *Action: Commissioner Edge moved to approve the September 30 and December*
12 *3, 2010 minutes as submitted. Commissioner Kerns seconded the motion, and the*
13 *motion carried unanimously by Webber, Klarquist, Kerns, Edge and Chair Rae.*

14
15 The Commission took a break at 9:15 a.m., and reconvened at 9:36 a.m.

16
17 **Exhibit B: OREGON FALCONRY RULES AUTHORIZING THE TAKE OF**
18 **PEREGRINE FALCON FOR 2011**

19 Martin Nugent, Endangered, Threatened and Sensitive Species Coordinator, during a
20 slide presentation talked about proposed amendments to Division 55 rules.

- 21
22 • Authorize “take” of up to seven peregrine nestlings/fledglings. Federal regulations
23 require peregrine falcon take not to exceed five percent of the estimated
24 productivity of the young in any one year; limits the take to master falconers.
25
26 • New definition for “management or operational activities” means activities on nest-
27 site structures to bridges or buildings during operational or maintenance actions of
28 the structure itself; requires peregrine nestlings be removed because of such
29 activities and in circumstances where removing the bird is unavoidable. Does not
30 include nest entries for purposes of banding birds for scientific purposes.
31
32 • Strengthen language to allow ODFW to invalidate peregrine capture permits if a
33 permit holder violates any rules.
34
35 • Limited take of nesting peregrine falcons from natural nest sites by resident
36 master falconers. Nugent said the take was restricted to bridges and man-made
37 structures in 2010 because of certain unlawful circumstances in 2009. Of the
38 seven permits being recommended for six residents, staff proposes:
39 ○ First four successful resident applicants may take nestlings from nest site;
40 or take a post fledging bird. Permit holder must notify ODFW Falconry
41 Program the names and locations that they have selected within two weeks
42 of receiving their raptor capture permit from ODFW.
43 ○ Two resident applicants may accept a young peregrine falcon taken by
44 persons authorized by ODFW to remove birds from man-made structures
45 (as described earlier); or take a post-fledging bird.
46 ○ Resident permit holders will be given preference over non-residents during
47 the lottery if a number of people want to take the birds that are available.

- 1 ○ Issued permits will have guidance on access and restrictions to certain land
- 2 areas, well being of the birds, and insuring training on handling of the birds.
- 3 ○ One non-resident permit holder may accept a nestling peregrine taken from
- 4 bridges or buildings (as described earlier); or take a post-fledgling bird.
- 5
- 6 ● Nestling peregrines taken from natural nest sites from resident master falconers:
- 7 ○ May be removed from May 15 to June 30 between 15 and 24 days of age.
- 8 ○ One nestling must be left in each nest prior to fledging.
- 9 ○ Prior to nest entry permit-holders required to monitor nest sites and assess
- 10 the presence and occupancy of nesting peregrine falcons; later determine
- 11 the presence and ages of nestlings; submit in writing to ODFW seven days
- 12 before they enter the nest site.
- 13 ○ Permit-holders must contact local ODFW biologist. On federal land, must
- 14 also contact U.S. Forest Service or BLM biologists before entering nest
- 15 sites. State and federal biologists may accompany permit-holders during
- 16 take activities.
- 17 ○ Permit-holder must be present when the nestling is taken from the nest by
- 18 another climber.

19
20 Nugent noted two new amendments proposed by staff and in consultation with
21 Commissioner Webber (**Attachment 6 – Supplemental DRAFT OAR, January 5,**
22 **2011**).

- 23
- 24 1. Modification to proposed 635-055-0035 Capture and Transportation of Raptors,
- 25 subsection (4), bottom of page 4 and top of page 5. After the sentence, “If a
- 26 permit holder violates any of the following rules, the Department will invalidate his
- 27 or her peregrine capture permit.”, insert “**Taking of a peregrine falcon under a**
- 28 **permit that is invalidated is a violation of these rules and is therefore an**
- 29 **unlawful taking.**”
- 30
- 31 2. On page 6, subsection (5)(a)(A), eleventh line down, after, “...derived from a GPS
- 32 unit indicating brand and model);...” insert “**the names and ownership of the**
- 33 **property,...**”, on which the nest site is located.
- 34
- 35

Public Testimony:

Kort Clayton	Kort Clayton, Oregon Falconers Association (OFA), thanked Martin Nugent for his work and said the recovery of this species and restored access to wild stocks for practice of our sport is quite important to us. The OFA supports this proposal and looks forward to the Commission’s positive review and action. OFA also looks forward to continuing to work with your staff pertaining to this body in the next couple of years on a revised version of the Oregon Falconer regulations that will comply with the recently revised federal regulations.
Al Elkins	Al Elkins, Oregon Hunters Association (OHA), thanked

Wilsonville, OR	ODFW staff for inviting OHA to be part of the meetings on the proposed draft rules, and for OFA in the time they've given OHA while working on the development of these rules. OHA supports the draft rules and believe it's a step in the right direction. With regard to the federal regulation rewrite, OHA would like to be partner with OFA on that as well.
Bob Sallinger Portland, OR	Bob Sallinger, Conservation Director for Audubon Society of Portland (ASP), said ASP supports these regulations. They appreciate the work of Nugent and the positive collaboration with OFA. These new regulations are important; they close gaps from 2007 when it was originally instituted. ASP did support those regulations; but some of what we have seen during the interim gives us concern about whether ODFW's oversight was adequate to ensure that people going into nests really were up to par in terms of being able to indentify nests, monitor it and enter it safely. There have been incidences where ASP needed to go back through. He said these new regulations ensure oversight; it will help make the sport better and protect the birds. ASP is interested in being part of the falconry rule rewrites when the feds download to the state.
Trent Seager South Beach, OR	Trent Seager, a PhD student at Oregon State University, talked about his background in raptor ecology as a raptor biologist, as a falconer and 12 years in raptor rehabilitation. He supports the rules and proposed changes, and said we need to be aware of raptor biology and reproduction when allowing take. The reason the feds allow a take of any wild raptor is that generally 80-90 percent of all birds born that year will die; biologically it makes sense and allows the sport to occur. All falconers are concerned with the illegal take that happened with the trespassing; we're not judging all falconers for the actions of a few. Seager said it's been great to work with ODFW and Martin Nugent. Falconers have been involved with the recovery of peregrines from the beginning, including providing the genetic stock. They are excited to see the recovery of peregrine occur.

- 1
- 2 Chair Rae reminded the Commission of the two changes to the new administrative rules
- 3 proposed in **Attachment 6 - Supplemental DRAFT OAR January 5, 2011**. She asked
- 4 Counselor Bill Cook to note the Commission's questions.
- 5
- 6 Commissioner Webber said he proposed those changes and suggested they might be
- 7 appropriate because, being involved in the Port Orford case, had those falconers actually

1 turned in their permits, they would have only been guilty of a misdemeanor. Whereas,
2 when you remove wildlife from habitat without any permit, it becomes a felony. He said if
3 they violate the permit that it would be an unlawful taking; you could prosecute them
4 under the theft statute versus just a misdemeanor. Their ownership is something that is
5 important in the sense that it was falconers in Port Orford who basically were claiming
6 they didn't know who owned the property. It was not clear on who they needed to ask, so
7 they didn't ask anybody. It's important to make them do their homework; go out to who
8 they need to address or request permission to enter that property.

9
10 Commissioner Klarquist referred to the proposed rule on page 7, line 9, (C) "Permittee
11 must be present when the nestling is being removed from the evrie." He asked who
12 actually removes these birds; the rule doesn't seem to have any regulation of who those
13 people might be. Nugent said the master falconers; or they can have a climber enter into
14 the nest site for them; but they must be present when the young are taken from the nest.

15
16 Commissioner Klarquist referred to sentence 10 (from the bottom) in Attachment 6 –
17 Supplemental DRAFT OAR, page 5, subparagraph (b), and said with regard to the two
18 alternatives under which the resident applicants may accept the falcons, the sentence
19 that states, "...resident applicants may accept a young peregrine falcon taken by
20 persons authorized by the department from man-made structures.", it also states about
21 the taking, "This will only occur in circumstances where nestlings need to be removed
22 from a nest during management or operational activities to nest-site structures, or take a
23 post-fledgling bird (pursuant to 635-055-0035 (5) (b))." He said, "... or take a post-
24 fledgling bird..." is not meant to modify the restriction. It has to be the second alternative
25 for those applicants. He suggested ending one sentence after the word "structures", and
26 make that second alternative a clear second alternative, "**The applicant may also take**
27 **a post-fledging bird.**"

28
29 Nugent said that is correct; that would work very well. Commissioner Klarquist said he
30 would leave it to legal counsel to draft the wording.

31
32 Counselor Bill Cook said what Commissioner Klarquist recommended was fine; to end
33 the sentence at "structures." "The applicant may also take..." Commissioner Klarquist
34 said insert "**alternatively**" in first sentence, page 6. You're not allowed to take two just
35 one or the other; that same change needs to be in both subparagraphs (b) and (c).

36
37 Counsel Cook asked, it would say, "The applicant may alternatively take...."?

38
39 Chair Rae recommended, "...; **alternatively, the applicant also may...**" She asked
40 Commissioner Klarquist if he was okay with that; he said yes.

41
42 Counselor Cook asked for clarification of the other place that Commissioner Klarquist
43 thought it was necessary. Commissioner Klarquist said in the next paragraph at the top
44 of page 6. Counselor Cook said the sentence there at "...structures, they may
45 alternatively..." Chair Rae said, "the applicant also may.." Commissioner Klarquist said
46 to strike the word "**also**" in both places. Chair Rae agreed

1 Chair Rae asked that for future editing purposes when the Commission is looking at draft
2 administrative rules that staff insert line numbering on the pages. She clarified:

- 3 • On page 5, (b), the second sentence ends with, “This will only occur in
4 circumstances where nestlings need to be removed from a nest during
5 management or operational activities to nest-site structures.” Insert
6 “***Alternatively, applicant may take...***”
- 7 • On page 6, first line, end the sentence after the word “structures:”. Strike the
8 word “or” and insert “***Alternatively, the permit holder may take...***”

9
10 Commissioner Edge said the OARs as presented actually have the permittees contacting
11 the Department twice; 1) within two weeks after receiving the permit identifying the
12 potential nest sites that they might take the birds from; and 2) notifying us within seven
13 days that they are going to enter a nest. He said we charge \$15 for this? Nugent said
14 yes. Commissioner Edge asked when the fee was last changed. Nugent said two years
15 ago. Commissioner Edge said this is an example where we are giving this away at a
16 huge amount of employee expense; it’s hard to imagine that seven permits will even pay
17 for a day of Nugent’s time. We do a lot of things on behalf of the resources in this state
18 for some very important and long-term user groups (which he supports); but, are also
19 remarkably underfunded from the standpoint of what it costs us to do it.

20
21 Chair Rae said we concur and it has been noted by the Director’s Office.

22
23 Commissioner Edge supported Commissioner Webber’s proposal to make this a
24 potential felony if a person violates the rules. All the correspondence in opposition of
25 changes repeatedly pointed out the incident in 2009 and today’s testimony twice said we
26 shouldn’t punish everyone for the bad apples. He is not very tolerant of people that break
27 the laws and have no respect for our fish and wildlife resources. He suggested to
28 Commissioner Webber that we revoke all their permits while participating in the sport if
29 they violate a rule; we should have put the person out of business completely in Oregon.

30
31 Chair Rae said when Martin and the work group look at our compliance with the federal
32 rules they could take this into consideration then. Commissioner Edge agreed.

33
34 *Action: Commissioner Edge moved to amend OAR 635-055, as presented by staff*
35 *and edited in our discussions this morning, specifically changing Section 4, (b)*
36 *and (c), to all those changes. Commissioner Klarquist seconded the motion, and*
37 *the motion passed unanimously by an aye vote from Commissioners Webber,*
38 *Klarquist, Kerns, Edge and Chair Rae.*

39 40 **Exhibit C: MULE DEER INITIATIVE BRIEFING**

41 Don Whittaker, Ungulate Coordinator, provided an update of activities on Oregon’s Mule
42 Deer Initiative (MDI). He said the mule deer population has slowly been declining over
43 the last 30 years due to severe winter and drought; predators and grazing and forest
44 management practices. He highlighted activities in five selected MDI units:

- 45 1. Maury. Habitat management (fencing, forage planting, aspen restoration,
46 juniper removal), and increased law enforcement in Prineville.

- 1 2. Steens. Predator management (20 cougars removed in first year); habitat
2 management work with BLM to remove juniper and discuss BLM's wild horse
3 policy with BLM staff to resolve issues; law enforcement; controlled archery
4 hunting; and population monitoring.
- 5 3. Warner. Predator management (8 cougars removed out of 14); habitat
6 management (7,000 acres juniper removal); law enforcement increased,
7 controlled bow hunting (buck and LOP tags reduced); and population
8 monitoring.
- 9 4. Murderers Creek. Habitat management (juniper removal, seeded to native
10 forage, weed control); law enforcement; disturbance and harassment; and
11 population monitoring.
- 12 5. Heppner. Predator management (124 coyotes trapped on fawning areas);
13 Habitat management (SAFE Habitat plans in process; \$5 million); and
14 increased law enforcement and secured money for OSP patrol equipment.

15
16 **Public Testimony:**

<p>Al Elkins Wilsonville, OR</p>	<p>Al Elkins, OHA, said the Board is very pleased with the Management Unit plans that the Department has done and proud to be part of the process. He said there were population management listings for the other three units but not the Heppner and Murderer's Creek Units. He asked why there were no tag reductions and a controlled archery hunt in those two units. A priority is OHA's concern over the loss of wildlife around the state; we ask to be kept informed about these management units and how we would be updated; for instance, like the presentation today. Will there be quarterly or annual reports?</p>
--------------------------------------	---

17
18 Chair Rae asked Whittaker to respond to Mr. Elkins questions.

19
20 Whittaker said with regard to feedback, yesterday he spoke with Michelle Dennehy in
21 Information & Education about updating the MDI newsletter. The public can sign up at
22 http://www.dfw.state.or.us/resources/hunting/big_game/mule_deer/news/index.asp, to
23 receive MDI Newsletters by email. He said habitat management is occurring in all five of
24 our MDI units, but there are other focused activities in the other units. The Steens and
25 Malheur Units have a focus on cougar and habitat management. The Heppner and
26 Murderer's Creek Units' population and season management with controlled hunting for
27 archery or the reduction in tags are heavily involved with the direction by the local
28 working groups; they thought let's start working on habitat and disturbance first.

29
30 Commissioner Edge referred to a news release about a Wild Horse and Burros Program
31 summit for interested stakeholders to work on the rangewide over-population of horses
32 and how to deal with it. He asked if staff intends to participate. Whittaker said staff
33 attended the Wild Horse Expo in Denver last year. Eric Rickerson, Wildlife Division
34 Deputy Director, said the Department is heavily involved through the Western
35 Association of Fish and Wildlife Agencies. Staff also provided comments to the BLM

1 during their Management Plan update that encouraged the BLM to manage those herds
2 within the existing animal management levels that they have established, and to raise
3 the awareness of the impact the feral horses are having on the native wildlife habitat.
4

5 **Exhibit D: WILDLIFE AREA PARKING PERMIT PROGRAM**

6 Nancy Breuner, Wildlife Area Operations Coordinator, said the Commission instructed
7 staff to amend several sections of the draft OARs at their December 2010 Commission
8 meeting. Breuner overviewed the changes in **Attachment 6 – Supplemental DRAFT**
9 **OAR January 7, 2011** that was handed out today.

- 10
- 11 • Section (4) specifies that, effective January 12, 2012; any hunting license will
12 include a free annual parking permit. Clarifies effective date to avoid confusion
13 with the current Sauvie Island parking permit program; that program is status quo
14 for 2011; this was modified to be consistent with other wildlife areas.
15
- 16 • Added the term “annual” to annual hunting license to clarify that any annual
17 hunting license (including Combination and Sports Pac, disabled veterans and
18 Pioneer) would all include a free annual parking permit.
19
- 20 • Section (7) makes an exception to require a parking permit for those volunteers
21 working on Department-related activities and using their private vehicle. Provides
22 an exception for individuals arriving in private vehicles to address fire, health or
23 safety emergencies on a wildlife area.
24
- 25 • Counselor Bill Cook determined that paragraph (8) (b) was redundant; asked staff
26 to delete that entire paragraph to remove duplicative language inconsistent with
27 subsection (8)(a). With that modification paragraph (8)(c) is now (8)(b). Captain
28 Jeff Samuels asked staff to change the term “police” officer to “*peace*” officer, and
29 “notice” to “*citation*”. Added language also allows enforcement capability to any
30 “*person authorized to enforce the wildlife laws...*”
31

32 **Public Testimony:** There was no public testimony.
33

34 Commissioner Webber said when he originally talked to Breuner about whether we issue
35 annual parking permits with all hunting licenses, he was concerned about three-day non-
36 resident licenses getting an annual parking permit, and thought it would be fairer if we
37 issued a parking permit that runs for the same three days they have a hunting license
38 for. In talking to staff prior to the meeting, that doesn't create an insurmountable problem
39 in terms of the computer issuing that license and permit.
40

41 Chair Rae said she was under the impression that the Commission's proposal would
42 already cover that person, regardless of the type of hunting license they have.
43

44 Commissioner Webber said on page 2, OAR 635-008-151, subparagraph (4) states,
45 “**Beginning with 2012 licenses, any...**” it originally said. “.., **any hunting license...**” He
46 has asked staff to include the word annual, “.., any **annual** hunting license...” He

1 suggested doing it in a way that includes the three-day licenses without giving them an
2 annual parking permit.

3
4 Chair Rae asked for reactions to Commissioner Webber's suggestion. Commissioner
5 Edge agreed. Commissioner Klarquist was ambivalent. Chair Rae asked for staff's
6 recommendation.

7
8 Deputy Director Melcher said Commissioner Webber's interpretation is correct. The
9 individual who buys a three-day non-resident hunting license would not receive the
10 parking privileges with that license. ODFW sells daily and annual parking permits. He
11 said if we're going to sell a parking permit that is good for the same three days as what's
12 on the license, I don't want to say that's a minimal programming issue, just because of
13 our history with the Point of Sale (POS) license system contractor to deliver or not on
14 some of the high priority projects that we're working on. He offered to get the number of
15 three-day licenses sold annually to non-residents, who use the wildlife areas.

16
17 Breuer noted that last year the Department had 3,603 three-day bird hunting licenses
18 purchased; so, the last three years on average is close to about 3,000.

19
20 Commissioner Webber said he didn't intend to create a huge expense or problem; he
21 wanted to think through what would be fair to all.

22
23 Deputy Director Melcher said he didn't want to change this here without first having
24 discussions on what seems like it might be a minor programming change on ODFW's
25 data license delivery system; but staff will do whatever the Commission tells us to do.

26
27 Chair Rae said this is the first meeting in 2011; this program doesn't go into effect until
28 2012. She recommended proceeding ahead and getting this in place in lieu of the few
29 folks that have written to the Commission to say that this is the right thing to do. She said
30 folks are using the resource and need to help fund the resource. Folks in licensing and
31 the department professionals can work on considering all other licenses and work with
32 the vendor to see how complicated that might be. Commission Webber agreed.

33
34 Commissioner Edge agreed with the cautionary note. He noted an email (from Dr. Joel
35 Geiger) that offered ideas of other places for parking permit sales, and tying a primary
36 interest question to our POS system. He asked staff to look at other opportunities as well
37 where some of the watchable wildlife people more regularly hang out.

38
39 Chair Rae said this needed to be a unanimous vote to pass because she only had four
40 Commissioners present; Commissioner Kerns was not in the room.

41
42 *Action: Commissioner Edge moved to adopt the Wildlife Area Parking Permit*
43 *Program and amend OAR Chapter 635, Division 008, as proposed by staff in the*
44 *revised Attachment 6 presented today. Commissioner Klarquist seconded the*
45 *motion. The motion carried by a unanimous aye vote from Commissioners*
46 *Webber, Klarquist, Edge and Chair Rae, who noted that Commissioner Kerns had*
47 *returned to the meeting and also voted aye.*

1
2 **Exhibit E: SCHEDULE OF DAMAGES FOR COMMERCIAL FISHING VIOLATIONS**

3 Chair Rae said Cameron Smith, Budget Manager, would make a rare appearance today.
4 This report was normally presented by economist Christine Broniak who has a new
5 opportunity working for the Legislative Revenue Office; the Commission wishes her well.
6

7 Cameron Smith presented the annual request for adopting the average market value for
8 each species of food fish as required by ORS 506.720. He said Attachment 4 - OAR
9 635-0006-0232 shows the prior average market value in brackets of each species and
10 the new market values in bold underline. The 2011 market values are calculated based
11 on the average market value of the 2010 prices. He said a lot of these fish are not
12 caught that often, which is why for some species the price was lowered.
13

14 Chair Rae asked why (iv) Darkblotched (page 1) had gone from \$0.48 to \$2.00. Smith
15 said that was one of his recommendations to reduce it from \$2.00 to \$0.51 cents. Chair
16 Rae said that was better; it wasn't so steep.
17

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

20 *Action: Commissioner Kerns moved to amend the Schedule of Damages for*
21 *Commercial Fishing Violations contained in OAR 635-006-0232 as proposed by*
22 *staff in Attachment 4. Commissioner Edge seconded the motion; then asked for a*
23 *point of clarification on the one change proposed. Chair Rae noted on page 1,*
24 *under (R) Rockfish: (iv) Darkblotched was changed from \$2.00 to \$0.51 cents.*
25 *Commissioner Edge offered that as amended. Chair Rae asked for any dissent on*
26 *the amendment. She said the motion is to approve the rules as amended. She*
27 *took an oral vote, and the motion passed unanimously by an aye vote from*
28 *Webber, Klarquist, Kerns, Edge and Chair Rae.*
29

30 Commissioner Kerns said the Commission still needed to vote on the main motion.
31 Counselor Steve Sanders said he understood that the motion had been framed with that
32 amendment, but the Commission could revote with a clarification of the \$0.51 cents.
33

34 *Chair Rae asked Commissioner Edge to withdraw his motion. Commissioner*
35 *Edge withdrew his motion. She said the Commission would vote on the main*
36 *motion; all in favor of the motion to adopt the administrative rules as amended*
37 *vote aye.*
38

39 Counselor Sanders we have a different or another second for the second motion.
40

41 *Chair Rae clarified that the original motion was moved by Commissioner Kerns*
42 *and seconded by Commissioner Edge. It was amended by Commissioner Edge*
43 *and we have voted in favor of the amendment for the Darkblotched. The*
44 *Commission is now voting on the main motion to adopt the rules as amended.*
45 *She took an oral vote, and the motion passed unanimously by an aye vote from*
46 *Commissioners Webber, Klarquist, Kerns, Edge and Chair Rae.*
47

1
2 **Exhibit F: FIVE YEAR ADMINISTRATIVE RULE REVIEW**

3 Deputy Director Melcher reported that the 2005 Legislature adopted ORS 183.405 that
4 requires the Commission to review new administrative rules within five years of their
5 adoption. We received guidance from the Department of Justice on this matter. Staff is
6 recommending that the Commission delegate the authority to conduct such a review to
7 the Director, and then we will maintain files of those reviews in the Director's Office.
8

9 Commissioner Webber referred to Attachment 3 and recommended changing line 5 in
10 the draft Delegation Order to read, "...assigns to the Director **the** authority to conduct.." instead of "...to the authority to conduct". Chair Rae said that was correct.
11
12

13 **Public Testimony:** There was no public testimony.
14

15 Commissioner Edge asked what the Director will report to the Commission. Deputy
16 Director Melcher said we will provide a brief report annually that details the list of rules
17 that we have reviewed in compliance with that new statute.
18

19 Commissioner Webber said since you have to do this within five years, are you going to
20 review over the year what we did five years ago and you'll come back and report having
21 reviewed that? Deputy Director Melcher said we do not intend to come back before you
22 every month with a report on the previous five year rules. We will bundle the rules and
23 come before you with one brief item on a future Commission agenda.
24

25 Chair Rae noted the typographical error in Attachment 3 and asked for a motion.
26

27 *Action: Commissioner Webber moved to delegate to the Director the authority to*
28 *review all administrative rules as required by ORS 183.405, on the Commission's*
29 *behalf, and direct the Chair to sign the Delegation Order in Attachment 3 as*
30 *revised. Commissioner Klarquist seconded the motion. The motion passed*
31 *unanimously by an aye vote from Commissioners Webber, Klarquist, Kerns, Edge*
32 *and Chair Rae.*
33

34 Commissioner Klarquist said in the first paragraph of the report it states we're supposed
35 to have this review completed before the end of this January. Deputy Director Melcher
36 said staff has already begun the review process and have been compiling the list of rules
37 that this would apply to. We have developed a form and we will go through a series of
38 questions for each new rule. The Director's Office will conduct that review this month.
39

40 **ADJOURN**

41 Chair Rae adjourned the Commission meeting at 11:17 a.m.