



Oregon Fish and Wildlife Commission Minutes

Meeting:
December 10, 2009 1:00 pm
Oregon Department of Fish and Wildlife
3406 Cherry Ave. NE
Salem, Oregon 97303

Meeting:
December 11, 2009 8:00 a.m.
Oregon Department of Fish and Wildlife
3406 Cherry Ave. NE
Salem, Oregon 97303

1
2 *Commission minutes are considered draft until approved by the*
3 *Commission at its next meeting.*
4

5 Notice of these meetings had been made by press release of statewide media
6 circulation. Those attending part or all of the meeting included:
7

- | | |
|------------------------------|--|
| Marla Rae, Chair | Roy Elicker, Director |
| Dan Edge, Vice-Chair | Curt Melcher, Deputy Director |
| Zane Smith, Commissioner | Chris Wheaton, Acting Deputy Director |
| Jon Englund, Commissioner | Bill Cook, Assistant Attorney General |
| Skip Klarquist, Commissioner | Sandra Fixsen, Fish Division Assistant |
| Carter Kerns, Commissioner | |
| Bobby Levy, Commissioner | |

8
9 **MEETING**

10
11 Chair Marla Rae called the Oregon Fish and Wildlife Commission meeting to order on
12 Thursday, December 10, 2009 at 1:00 p.m.
13

14 **Exhibit A: COMMISSION MINUTES**

15 Chair Rae referred to page 12, second paragraph, and said from the written packet, she
16 corrected the last name of Craig Dorsay (not Dorsett).

17 *Action: Commissioner Edge moved to approve the October 2, 2009 minutes as*
18 *amended. Commissioner Englund seconded the motion, and the motion carried*
19 *unanimously.*
20

21 **Exhibit B: ACCESS AND HABITAT PROJECT FUNDING APPROVAL**

22 Matt Keenan, Access and Habitat (A&H) Program Coordinator, said in October the
23 Commission's approved seven A&H projects, two of which were habitat only. He
24 reviewed OAR Division 090, Oregon's policy to improve Oregon's resource access and
25 wildlife habitat through the Department, landowners and hunters to manage wildlife on
26 private land through financial revenues; the A&H Surcharge, and raffle sales. He said
27 the A&H Board recommends funding the following enhancement projects:

- 28 • Russell Canyon Water
- 29 • Summer Lake Wetland
- 30 • Murderers Creek Winter Range
- 31 • Sundry/Rooster Rock Habitat Improvement
- 32 • Blue Mountain Elk Initiative
- 33 • Hay Creek Habitat Restoration
- Rogue Meadows Enhancement

1
2 Commissioner Levy discussed the Hay Creek Habitat Restoration agreement with the
3 Oregon Parks and Recreation Department (OPRD) for access. If approved, can staff
4 continue to work with OPRD to get a formal agreement? She referred to the Rogue
5 Meadows project and requested formal training and licensing for anyone applying
6 chemicals for fertilization. Keenan said OPRD is favorable in continuing a relationship
7 with ODFW. Craig Ely added that with regard to the ongoing relationship with OPRD,
8 concerns will be addressed through the Administrative Rules process.
9

10 **Public Testimony:**

Al Elkins Wilsonville, OR	Al Elkins, Oregon Hunters Association (OHA), asked that OHA be kept in the loop on the question of the relationship with State Parks. Also, he said the dissenting voters were expressing their concerns about the ongoing costs in relation to the budget. He asked for an explanation.
------------------------------	--

11
12 Keenan referred to Elkins' concerns over surcharges, and said this is more of a concern
13 now than in the past because the A&H budget is still quite limited. The surcharge
14 increase will take effect in January 2010. If the current projects are approved, only
15 \$90,000 remains for the rest of the biennium.
16

17 *Action: Commissioner Kerns moved to approve the recommendations of the*
18 *Access and Habitat Board for project funding as proposed by staff.*
19 *Commissioner Edge seconded the motion and the motion was carried*
20 *unanimously.*
21

22 **EXHIBIT C: ACCESS AND HABITAT BOARD APPOINTMENT**

23 Matt Keenan, Access and Habitat (A&H) Program Coordinator, asked the Commission
24 to select a board member to replace Duane Bernard (who is stepping down after eight
25 years) from one of the following applicants:

- 26 • Todd Bastian, Corvallis, Director of Development, OSU Foundation, College of
27 Ag;
- 28 • Roger Borine, Bend, Natural Resource Consultant;
- 29 • Alan Christensen, Portland, Wildlife biologist, retired;
- 30 • Donald Poole, Salem, semi-retired; and;
- 31 • Kenneth Range, Brookings, retired.

32
33 Chair Rae said the applicants were a good representation of the various regions in
34 Oregon. Commissioner Smith noted all were excellent; he endorsed Alan Christensen.
35

36 **Public Testimony**

Al Elkins Wilsonville, OR	Al Elkins, OHA, submitted a letter of endorsement for Dale Ballard. He said Ballard is a Salem firefighter, and has first-hand involvement with the Abiqua Basin project.
------------------------------	---

1 Chair Rae expressed support for Todd Bastian, but recommended that the Commission
2 elect Christensen for the position. Commissioner Edge said he wrote a letter of
3 recommendation for Todd Bastian; however, he will support Christensen.

4
5 *Action: Commissioner Smith moved to appoint Alan Christiansen to serve a four-*
6 *year term as Hunter Representative on the Access and Habitat Board.*
7 *Commissioner Levy seconded the motion, and the motion was carried*
8 *unanimously.*
9

10 Chair Rae presented an award to Duane Bernard, the outgoing Hunter Representative
11 position, and thanked him for his contributions to the A&H program.
12

Exhibit D: ACCESS AND HABITAT PROGRAM RULES

13 Matt Keenan, A&H Program Coordinator, said the A&H rule change request is for the
14 purpose of synchronizing OAR with recent statute authority in the 2009 Legislature. He
15 discussed HB 2218, which reduces the required number of landowner representative
16 applicants from fifteen to five. Keenan said the OAR currently requires the A&H Board
17 Chair to be appointed from that same list, submitted by the Oregon Department of
18 Forestry and Oregon Department of Agriculture. Keenan requested a change to
19 remove that requirement. He also said that HB 3089 authorizes A&H to acquire access
20 easements to promote access to public and private lands. He asked that the rule be
21 changed to mirror this change and the Commission adopt the rules as proposed.
22

23 **Public Testimony:** None.
24

25 *Action: Commissioner Edge moved to amend OAR 635-090, as presented by*
26 *staff, and to adopt the rules as proposed. Commissioner Smith seconded the*
27 *motion and the motion was carried unanimously*
28

INTRODUCTION OF MURALS

29 Chair Rae asked Rick Hargrave to discuss the murals hanging behind the Commission
30 dais and in the back of the room.
31

32
33 Hargrave said former ODFW employee Paul Ingram donated them. They are oils,
34 painted by former state employee Harold Cramer-Smith, the state's only wildlife artist,
35 for the Oregon Centennial celebration in 1959.
36

EXHIBIT E: OREGON FALCONRY RULES – AUTHORIZING THE TAKE OF PEREGRINE FALCONS FOR 2010

37 Martin Nugent, Threatened & Endangered and Sensitive Species Coordinator, gave a
38 slide presentation on Falconry Administrative Rule Amendments, and said staff
39 recommends the take for the 2010 season to remain at seven nestlings; six will be from
40 Oregon residents. He recommended changing the rules to authorize peregrines to be
41 taken only from man-made structures (e.g., bridges and buildings) during management
42 operations. Also, to allow the post-fledgling take of young falcons that recently left their
43 nest. He said the department may revoke a falconry license or permit of an applicant
44 has violated any wildlife law, rule, order or permit.

1
 2 Commissioner Kerns asked why the take should be restricted to man-made structures.
 3 Nugent said there have been two years of taking from the wild, and the permits were
 4 returned unused. Also, over the last several years there have been a number of
 5 breeding birds in the Portland area, and they often don't survive.

6
 7 **Public Testimony:**

<p>Dave Peterson Roseburg, OR</p>	<p>Dave Peterson, retired U.S. Fish and Wildlife biologist and a falconer, submitted written comments. He's concerned about the reasoning behind banning the taking of peregrine from nest sites. He asked the Commission to delete the language prohibiting take of eyas peregrine from nest sites and suggested re-wording the language on seizing and what is seized when a violation occurs. Second, he addressed Commissioner Kerns' comments on the issue of permission from private landowners to take birds from nest sites on private land.</p> <p>Commissioner Smith said the rule punishes innocent falconers, and that man-made structures are a huge source for these birds. Peterson said some falconers would prefer to take a bird from its natural setting. To restrict total access is unnecessary and unwarranted. There are only six birds in question, and this is an overreaction.</p>
<p>Bob Welle Canby, OR</p>	<p>Bob Welle, President of Oregon Falconers Association (OFA), said OFA supports the Department's decisions. He is concerned about rushing into amending regulations for violators.</p> <p>Commissioner Klarquist questioned the timeframe for giving notice of trapping; seven days is not reasonable. Welle said it is not reasonable to expect that a trapper will know in advance when they'll trap a post-fledgling bird.</p>

8
 9 Commissioner Klarquist referred to Attachment 4, page 3, line 4, and said staff is
 10 describing the bird that could be taken; it's defined three different ways in the
 11 terminology. But is staff just talking about fledging peregrine falcon, as defined earlier?
 12 Nugent said yes, that is the main definition. Klarquist said it would remove ambiguity if
 13 staff used that same terminology throughout that section.

14
 15 Chair Rae said she would have Counsel Bill Cook responsible for these notations. She
 16 referred to the phrase "young first year bird" and asked if staff wasn't being redundant in

1 that statement. Klarquist agreed and said it should just say “post-fledging peregrine
2 falcon”. He said in the same section, (A), “Trapping attempts will *only be permitted* at
3 locations...” should read “Trapping attempts will be *permitted only* at locations...”
4

5 Commissioner Kerns offered an amendment to the proposal to incorporate Mr.
6 Peterson’s recommendations as to place of take. The punishment factor of any
7 violation of any wildlife rule is restrictive.
8

9 Chair Rae summarized the changes that the Commission will take up separately:

- 10 • Under the Place of Take rule, add “natural” in addition to “man-made”; and
- 11 • Add under Punishment rule; that is to go to “falconry-related violations”.
12

13 Ron Anglin said on page 5, Attachment 4, under Revocation of License and Permits, the
14 language does not say the department “will” or the department “shall” suspend those
15 licenses or permits, or “will” or “shall” seize the birds, which gives staff the broad
16 discretion to focus on if it’s falconry specific. With regard to suspension of the license, if
17 it was a bad wildlife violation that went through a protracted court case and the
18 department did not want them to participate, the department might consider it.
19

20 Chair Rae asked for comments on the preferences of the “Place of Take” proposed
21 rules; specifically limited to man-made structures.
22

23 Anglin said the department ends up with rescued birds and something needs to be done
24 with those birds; this could serve as an excellent outlet for those birds. In the first year
25 that permits were issued people were capturing wild birds in cliffs that knew nothing
26 about rock climbing and were bringing in someone else that would actually retrieve the
27 bird out of the nest sites. Anglin said this is only the third capture season since the birds
28 have been delisted, so staff is trying to prevent any unfortunate incidences since the
29 federal government turned this issue over to the department.
30

31 Commissioner Klarquist said urban birds get rescued and this gives an outlet where to
32 put them; he wants to limit the take to birds in urban areas. Commissioner Edge agreed.
33 Since the department is in a period of transition in taking over the federal rules it seems
34 prudent to direct the taking of nestlings from man-made structures.
35

36 Chair Rae said that Commissioner Kern’s issue had been raised and the majority of the
37 Commission supports man-made structures. She asked staff when they returned to the
38 Commission, once the federal government turns this over to the department, to be
39 prepared to either put other structures in the rules or a justification of why to leave it with
40 an urban concern.
41

42 Chair Rae asked the Commission for comments with regard to punishment in the
43 current proposal on page 5, Attachment 4, Revocation of License and Permits; the
44 wording “may” versus “shall”. She said two other issues were raised:

- 45 1. It is for any wildlife violation; should that be limited to falconry; and
- 46 2. The seizure of raptors held.
47

1 Commissioner Levy expressed the importance of consistency of wording for rules for
2 people who violate the rules. Commissioner Smith discussed giving the department
3 discretionary decision-making. Commissioner Edge clarified what part of the rule they
4 were discussing; not the use of the term “may” but any wildlife violation being under
5 consideration. He said he is okay with the existing wording, but would prefer “shall” if
6 specific to falconry violations. Commissioner Smith agreed.

7
8 Chair Rae recommended not finalizing the rules today. She said staff will present new
9 proposed rules on December 11, 2009, so the Commission can reach consensus.

10
11 Commissioner Klarquist supports keeping the current wording which gives the
12 department the discretion; for instance, in a contested case hearing.

13
14 Chair Rae said given that these are permits and not licenses, and the department is
15 giving them the opportunity to engage in this, she is not comfortable in saying if you are
16 a falconer that poaches out of season that you still have a permit from the department;
17 so, she supports the may. It is discretionary on how the Commission should do the
18 grievous portion. If it is falconry related, then she agrees to seize the birds. She said
19 Commissioner Levy is right that the Commission should work for consistency in all of
20 the revocation and permitting when they are violated. Chair Rae said amendments to
21 the rules were revised; she asked Counsel to publicly discuss them, so when the
22 Commission reconvenes on December 11, a printed version will be available.

23
24 Counsel Bill Cook discussed due process. He said if the Commission were to revoke
25 any license or permit that somebody holds, you have to give them certain notice and
26 offer them a hearing before revocation or get to any kind of seizure. Regarding
27 Commissioner Kerns’ issue, in the fourth line in the new subsection (b), delete the word
28 “young” and the parenthesis around post-fledgling, so that it would read “a post-fledgling
29 peregrine falcon”. In line 5, remove the phrase “young bird of the year” and replace that
30 with “falcon”, so it says “after the falcon flies”. Commissioner Edge said in that case
31 you’ve taken away the fact that it is a yearling bird. Cook referred to the definitions on
32 page 1 (Attachment 4) and said Commissioner Klarquist’s point was good that the
33 definition of “post fledgling” is pretty comprehensive; it picks up young first-year bird.

34
35 Cook continued in Line 6, subparagraph (A) move the word “only” so that it follows the
36 word “permitted” so it reads, “Trapping attempts will be permitted only at..” To insure
37 that he was reading the Commission on the standard revocation (see page 5), he asked
38 if the Commission was leaving it as the staff had drafted it.

39
40 Chair Rae said the way the rule is written, “The department may revoke a falconry
41 license or permit if the holder is convicted of...” any wildlife violation or pleads guilty to
42 any wildlife violation. Upon the revocation, the department may seize any raptors held
43 for the purpose of falconry. She said given the clarifications from Counsel Cook, the
44 Commission is ready to go with the rule language.

45
46 Counsel Cook said okay. He suggested adding commas on page 4 (Attachment 4)
47 under Section (2) in subparagraphs (a), (b) and (c) after each phrase “, or has been

1 convicted of..." He said on page 5 under Revocation of License and Permits, to add a
2 comma in the fourth sentence after the phrase "...or admits to a violation of..." Cook
3 said in terms of the number of seven birds, he didn't see them in the rule and stated that
4 the Commission needed a second resolution for that.

5
6 Chair Rae said the record is clear that the Commission has made changes to the
7 proposed Attachment 4 on page 3, subsection (new) (B), has been changed to read this
8 way, "A post fledgling peregrine falcon may be taken (trapped) by a permitted master
9 falconer after the *falcon* flies from its nest through August 31st." For section (A),
10 "Trapping attempts will be permitted *only* at locations approved by the Department.",
11 and the remainder as printed is as printed and as proposed. On page 4, the additions
12 of the three commas, and 055-0037, and the additional comma in 635-055-0070 (page
13 5, under Revocation of License and Permits). She stated the record is abundantly clear.

14
15 *Action: Commissioner Edge moved to amend OAR 635 Division 055 as*
16 *presented by staff with the additions or editorial changes in the record. As a*
17 *result, the Department recommends a maximum total of seven peregrines be*
18 *allowed to be taken in 2010 in accordance with these and amended rules and the*
19 *Department's permits.*

20
21 Ron Anglin noted that the actual number is in the rules (page 5, new subsection 6), it is
22 not changed from last year, and it gives staff the ability to move ahead with that.

23
24 *Commissioner Levy seconded the motion and the motion passed by a 6-to-1 yes*
25 *vote by Commissioners Edge, Englund, Klarquist, Levy, Smith and Chair Rae.*
26 *Commissioner Carter Kerns opposed.*

27
28 **Exhibit F: DISPOSAL OF WILDLIFE PARTS - POSTPONED**

29 The Commission took at break at 3:00 p.m. and reconvened at 3:10 p.m.

30
31 **Exhibit G: CRIMINAL HISTORY BACKGROUND CHECKS**

32 Jonathan Herman, Human Resources Assistant Administrator, discussed expansion of
33 the administrative rules relating to ODFW's Criminal History Background Checks. He
34 said HB 2224 (passed in 2007) will be implemented January 1, 2010. The expanded
35 rule brings the department into consistency with other agencies, and requires
36 applicants, volunteers, vendors and contractors to undergo criminal history checks. He
37 recommended adopting the new rules as proposed.

38 Chair Rae said she believes strongly that this should apply to any and every instance.

39
40 **Public Testimony:** None.

41
42 *Action: Commissioner Levy moved to adopt OAR Chapter 635 Division 600 as*
43 *proposed. Commissioner Edge seconded the motion, and the motion was carried*
44 *unanimously.*

Exhibit H: MASTER HUNTER VIOLATIONS

1 Chris Willard, Education Services Manager, discussed amending the administrative
2 rules to suspend hunters from participation in the Master Hunter program for a period of
3 five years if the hunter is convicted of, or pleads guilty to, a violation of the wildlife laws.
4 He discussed the four phases of certification. There have been seven violations over
5 the last five years; this rule allows the Department to suspend the hunters' participation.
6

7 Chair Rae asked about the timeframe for the review. Willard said the primary focus for
8 two years has been hunter education; the next order of business will be the Master
9 Hunter program. Commissioner Klarquist expressed concern over the five-year
10 violation time-frame. Willard said this is an attempt to be consistent with other
11 programs. Chair Rae said, in the revamping process of this program, to take into
12 account equitability, fairness and promotion concerns.
13

14 **Public Testimony:** None.
15

16 *Action: Commissioner Levy moved to amend OAR 635-048-0080 as proposed by*
17 *staff. Commissioner Smith seconded the motion, and the motion was carried*
18 *unanimously.*
19

OTHER BUSINESS

20 Commissioner Edge said Oregon doesn't have rules on wearing fluorescent orange
21 while hunting. He noted that a teenaged boy was shot and killed while hunting because
22 he was not wearing the hunter orange. He asked staff to review this issue.
23
24

25 Director Elicker agreed. He said since 1992 there have been 26 hunting fatalities in
26 Oregon. Of those, 19 hunters said they thought they were shooting at a game animal.
27 Director Elicker noted that proposed bills in the Oregon Legislature to require hunter
28 orange have been dropped. He senses the Legislature will take this up in 2011, but
29 prefers the Commission take this issue up first. He noted the 2010 Regulations have
30 been printed.
31

32 Chair Rae asked what the Commission should take into account when considering such
33 a rule. Director Elicker said Oregon is in the minority because it does not require orange
34 clothing. Ron Anglin discussed reviewing other states' rules. Commissioner Englund
35 said to give the suppliers and hunters enough warning regarding this issue.
36

EXECUTIVE SESSION

37 Chair Rae announced that the Commission will hold an executive session pursuant to
38 ORS 192.660 (2) (i), and solely for the purpose of evaluating Director Roy Elicker.
39 When the Commission reconvenes, it will be only for the purpose of recessing until 8
40 a.m. tomorrow.
41
42

ADJOURN

43 Chair Marla Rae reconvened the meeting to adjourn it at 3:45 p.m.
44
45