



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
8

Marla Rae, Chair
Dan Edge, Vice-Chair
Zane Smith, Commissioner
Jon Englund, Commissioner
Skip Klarquist, Commissioner
Carter Kerns, Commissioner
Bobby Levy, Commissioner

Roy Elicker, Director
Curt Melcher, Deputy Director
Chris Wheaton, Acting Deputy Director
Steve Sanders, Assistant Attorney General
Michelle Tate, Wildlife Division Assistant

9
10 **MEETING**

11
12 Chair Marla Rae called the Friday, December 11, 2009 meeting of the Oregon Fish and
13 Wildlife Commission meeting to order at 8:00 a.m. She said the Commission's annual
14 review and evaluation of Director Elicker during yesterday's Executive Session was
15 quite positive.
16

17 Chair Rae extended congratulations to Bruce Taylor, Biodiversity Program Director for
18 Defenders of Wildlife, and Director of Oregon Habitat Joint Venture. He was recognized
19 by the U.S. Secretary of Agriculture with the NRCS Excellence in Conservation Award.
20

21 **DIRECTOR'S REPORT**

22 **Field Reports (Written report is part of the Commission's official record.)**
23

24 Northeast Region

25 Craig Ely, Northeast Region Manager, reported on implementation of the Department's
26 conservation strategy, and surveys conducted for the Wallowa County Bobolink. He
27 gave an update on the fall hunting season, which was average to below average.
28

29 High Desert Region

30 Bob Hooton, Malheur County Watershed Manager, reported on the Round Butte Dam
31 fish collection facility and the installation of the new vertical tower of the Selective Water
32 Withdrawal system. Hooton reported on the annual Bighorn Sheep translocation and
33 capture efforts on December 1-3. He said many of the captured sheep were transported
34 to Wyoming; others went to the John Day area.
35
36

1 Southwest Region

2 Steve Denney, Southwest Region Manager, reported on Chetco River Fall Chinook.
3 There has been a substantial decline in fish runs since 2002. Temporary regulations
4 were adopted to protect the remaining fish; preliminary spawning counts are
5 encouraging. He said staff initiated a pilot acclimation project. Next year's releases will
6 be one month later, giving opportunities to avert some avian predation. Staff is also
7 developing a conservation plan for all South Coast Fall Chinook populations.
8

9 Northwest Region

10 Steve Marx, Acting Northwest Region Manager, reported a record number of Coho in
11 the upper Willamette River. Final numbers were a record 25,219 adults and 2,090 jacks,
12 the highest number since 1954. He said the Confederated Tribes of Grand Ronde
13 collected 890 Coho at Agency Creek. Five of the department's hatcheries contributed
14 25,000 Coho to the Oregon Food Bank.
15

16 Conservation Strategy

17 Holly Michael, Conservation Policy Coordinator, said field staff will begin providing
18 project reports to the Commission during the Director's Reports. She gave updates on
19 climate change and wind energy issues. The Governor has directed staff to develop a
20 one-state adaptation strategy for climate change that will look at the built environment,
21 as well as social and economic impacts. Michael's said the Department is meeting often
22 with wind energy developers, and is looking for common ground with the industry.
23

24 Information and Education

25 Roger Fuhrman, Information and Education Administrator, reported that Chris Willard
26 has been promoted to Education Services Manager, and will supervise staff that
27 manage the hunter education programs. He said staff is also working on the Interactive
28 Economic Survey, a new ODFW website that allows users to search for economic
29 information on specific counties, regions or activities.
30

31 Marine Resources Program

32 Caren Braby, Marine Resources Program Manager, reported on the Crab Pot Retrieval
33 Program. Staff just completed the first season of the cleanup program. Several vessels
34 volunteered, and retrieved 40 pots. The second component involved 51 vessel days at
35 sea, and they cleaned up 1,200 crab pots between October and November. She said
36 the third effort involved higher-tech, using sonar in the Columbia River. Over 1,300 pots
37 were taken out of the ocean and river, and most were returned to their owners. Next
38 year aerial surveys will be used to help identify where the pots are located.
39

40 Oregon State Police

41 Walt Markee, Captain, Fish and Wildlife Division, reported on the conviction and
42 sentencing of Ray Hillsman, notorious for killing bears and storing their gall bladders in
43 a freezer. He received a "Violation of a Lifetime Hunting Suspension", served time in
44 prison, and was caught poaching again. Captain Markee discussed completion of
45 the Oregon State University (OSU) weekend class on fish and wildlife enforcement. He
46 also commended two troopers who are brothers for rescuing an injured hawk.
47

1 Commissioner Edge thanked Captain Markee for the class he presented, and said he
2 has received positive feedback from OSU students.

3 4 **Expenditure Report**

5 Chris Wheaton, Acting Deputy Director for Administration, gave a fiscal report on the
6 period ended October 2009. He said, in general, revenue is ahead of expectations,
7 although that trend of being ahead is declining. Expenditures are within limitation and
8 running as expected this biennium in all categories.

9
10 Director Roy Elicker asked Steve Williams to discuss a letter dated November 13 to
11 three Commissions from agency directors in Oregon, Idaho and Washington, and
12 addresses their common concerns with spring Chinook and Columbia River fisheries.

13 14 **Tri-State Letter to Fish and Wildlife Commissions**

15 Steve Williams, Assistant Administrator of Fish Division, said the joint letter was a result
16 of another letter sent to the Oregon and Washington commissions by the chair of the
17 Idaho Fish and Game Commission. The point of the Idaho letter was that it has similar
18 concerns as expressed by the Columbia River Treaty tribes - that our fisheries
19 management in 2008 and 2009 relied too heavily on run sizes, and impacted the runs.
20 Back in September, a meeting was held with the three directors and staff in Idaho. The
21 two main points: Need better coordination among the states; and approached catch
22 balancing. He said it is obvious that we need to work closely together into the future.

23
24 Director Elicker said a second meeting will be held this year in Washington.

25 26 **Columbia River Update**

27 Steve Williams distributed a white paper, 2010 Pre-Season Forecasts for Upriver Spring
28 Chinook by the *U.S. v. Oregon* Technical Advisory Committee, December 9, 2009. He
29 said a run size estimate of 470,000 for Upper Columbia and Snake River and spring
30 Chinook was released December 10. He said in past years estimates have missed the
31 run size forecast, so view the estimate with caution, and evaluate the buffers staff uses
32 in the season setting process. He also distributed the *2010 Spring Chinook and White
33 Sturgeon Fisheries Planning Timeline* for the next several months as part of public
34 record. He said adjustments will be made to the harvest guidelines.

35
36 Chair Rae noted that the proposed time frame in the planning timeline does not
37 contemplate rehashing the policy decisions that the Commission has made within the
38 last year regarding allocation issues on the Columbia. Williams said Washington staff
39 and their Commission are taking a similar approach. Chair Rae said this accounts for
40 all the *U.S. v. Oregon* agreements, Idaho having an active role at the table, as well as
41 continuing involvement with the Treaty Tribes.

42 43 **Adopt Temporary Rules**

44 Roy Elicker, Director, requested the Commission ratify the following 17 temporary rules.
45 The temporary rules were previously adopted by the director under his emergency
46 action authority.

1 **635-042-0060**

2 **Late Fall Commercial Salmon Gill Net Fishery in the Mainstem Columbia River**
3 **Rescinded**

4 Adopted October 2, 2009; effective October 5, 2009 through October 31, 2009.

5 Amended rule rescinds a previously scheduled late fall salmon fishery in the Columbia
6 River for the commercial harvest, retention and sales of adult salmon and white
7 sturgeon. The season had been scheduled for October 5, 2009.

8
9 **635-017-0090**

10 **Season Extended for Adipose Fin-clipped Coho in the Clackamas and Sandy Rivers and**
11 **Eagle Creek**

12 Adopted October 5, 2009; effective October 5, 2009 through December 31, 2009.

13 Amended rule allows sport anglers increased opportunity to harvest excess hatchery
14 coho that are returning to Sandy Hatchery on the Sandy River and Eagle Creek
15 National Fish Hatchery on the Clackamas River. The extended season on the
16 Clackamas and Sandy rivers and Eagle Creek will begin October 5, 2009.

17
18 **635-042-0060**

19 **Late Fall Commercial Gill Net Fisheries Authorized In the Columbia River Below**
20 **Bonneville Dam**

21 Adopted October 6, 2009; effective October 7, 2009 through October 31, 2009.

22 Amended rule sets two new fishing periods for the ongoing late fall salmon fishery in the
23 mainstem Columbia River for the commercial harvest, retention and sales of adult salmon
24 and white sturgeon beginning October 7, 2009. The proposed seasons provide opportunity
25 for the commercial gill net fleet to harvest part of their pre-season allocation. Revisions are
26 consistent with action taken October 6, 2009 by the Columbia River Compact agencies of
27 Oregon and Washington.

28
29 **635-004-0033**

30 **Revised Nearshore Species Cumulative Trip Limits for the Commercial Nearshore**
31 **Fishery**

32 Adopted October 6, 2009; effective October 10, 2009 through December 31, 2009.

33 Amended rule prohibits retention of cabezon for the remainder of Period 5 (October 10 –
34 October 31) and Period 6 (November 1 – December 31) of the Limited Entry Black/Blue
35 Rockfish fishery by permitted vessels, with or without a Nearshore Endorsement. Modifications
36 limit daily landings of Black and Blue rockfish to 15 pounds for the remainder of Period 5 and
37 for Period 6. Modifications also reduce the cumulative trip limit from 1,000 to 400 pounds for
38 Period 6. Previously reduced cumulative trip limits for greenling species remain in effect. The
39 Oregon Fish and Wildlife Commission previously established cumulative trip limits and
40 commercial nearshore harvest and landing caps for 2009 to limit total catch to sustainable
41 levels.

42
43 **635-019-0090 and 635-023-0134**

44 **Adipose Fin-clipped Steelhead Sport Bag Limit Increased In Four Northeast Oregon**
45 **Rivers**

46 Adopted October 9, 2009; effective October 18, 2009 through April 15, 2010.

47 Amended rules increase the daily bag limit for adipose fin-clipped steelhead from 3 to 5 per

1 day in the Snake, lower Grande Ronde, Wallowa and Imnaha rivers beginning October 18,
2 2009 through April 15, 2010. The increase is in response to large numbers of hatchery and
3 wild steelhead currently migrating through the Columbia and Snake rivers. Bag limits would
4 increase only in areas where hatchery fish are expected to return in abundance, to help
5 reduce the surplus at hatchery trapping facilities as well as reducing numbers of hatchery
6 steelhead straying into natural production areas.

7
8 **635-042-0060**

9 **Late Fall Commercial Gill Net Fishery In the Columbia River Below Bonneville Dam**
10 **Continued**

11 Adopted October 12, 2009; effective October 13, 2009 through October 31, 2009.
12 Amended rule sets four new fishing periods for the ongoing late fall salmon fishery in
13 the mainstem Columbia River for the commercial harvest, retention and sales of adult
14 salmon and white sturgeon beginning October 13, 2009. The proposed seasons provide
15 opportunity for the commercial gill net fleet to harvest part of their pre-season allocation.
16 Revisions are consistent with action taken October 12, 2009 by the Columbia River
17 Compact agencies of Oregon and Washington.

18
19 **635-041-0075**

20 **Commercial Sales from the Treaty Indian Platform and Hook-and-Line Fishery**
21 **Ends**

22 Adopted October 12, 2009; effective October 14, 2009 through October 31, 2009.
23 Amended rule closes the Treaty Indian platform and hook-and-line fishery in the
24 Columbia River above Bonneville Dam (Zone 6) to commercial sales of all species
25 effective 6:00 p.m. Friday, October 16, 2009. The fishery remains open for subsistence
26 use under all other existing regulations. Modifications are consistent with action taken
27 October 12, 2009 by the Columbia River Compact agencies of Oregon and Washington
28 in concert with the Columbia River Treaty Tribes.

29
30 **635-019-0090**

31 **Adipose Fin-clipped Steelhead Sport Bag Limit Increased In Four Northeast**
32 **Oregon Rivers**

33 Adopted October 13, 2009; effective October 18, 2009 through April 15, 2010.
34 Amended rules increase the daily bag limit for adipose fin-clipped steelhead from 3 to 5
35 per day in the Snake, lower Grande Ronde, Wallowa and Imnaha rivers beginning
36 October 18, 2009 through April 15, 2010. Modifications increase the daily bag limit for
37 adipose fin-clipped steelhead from 3 to 5 per day in Big Sheep Creek, from the mouth
38 upstream to Little Sheep Creek, beginning January 1, 2010. These increases are in
39 response to large numbers of hatchery and wild steelhead currently migrating through
40 the Columbia and Snake rivers and would increase only in areas where hatchery fish
41 are expected to return in abundance, to help reduce the surplus at hatchery trapping
42 facilities as well as reducing numbers of hatchery steelhead straying into natural
43 production areas.

44
45 **635-003-0085**

46 **Commercial Elk River Terminal Area Chinook Salmon Fishery Closed**

47 Adopted October 19, 2009; effective October 19, 2009 through October 31, 2009.

1 Amended rule closed the commercial Elk River terminal area Chinook salmon fishery
2 effective October 19, 2009 due to attainment of the allocation of this valuable resource.

3
4 **635-042-0060**

5 **Late Fall Commercial Gill Net Fishery In the Columbia River Below Bonneville Dam**
6 **Continues**

7 Adopted October 19, 2009; effective October 20, 2009 through October 31, 2009.
8 Amended rule sets five new fishing periods for the ongoing late fall salmon fishery in the
9 mainstem Columbia River for the commercial harvest, retention and sales of adult
10 salmon and white sturgeon beginning October 20, 2009. The proposed seasons provide
11 opportunity for the commercial gill net fleet to harvest part of their pre-season allocation.
12 Revisions are consistent with action taken October 19, 2009 by the Columbia River
13 Compact agencies of Oregon and Washington.

14
15 **635-023-0130**

16 **Recreational Coho Bag Limit Increased Between Tongue Point and Oregon-**
17 **Washington Border Above McNary Dam**

18 Adopted October 19, 2009; effective October 22, 2009 through December 31, 2009.
19 Amended rule allows retention of one additional adult coho salmon beginning October
20 22, 2009 and until further notice in the mainstem Columbia River recreational fishery
21 from the Tongue Point-Rocky Point line upstream to the Oregon-Washington border
22 above McNary Dam. All non adipose fin-clipped coho caught downstream of the Hood
23 River Bridge must be released unharmed. Modifications are consistent with action taken
24 October 19, 2009 by the Columbia River Compact agencies of Oregon and Washington.

25
26 **635-042-0060**

27 **Late Fall Commercial Gill Net Fishery In the Columbia River Below Bonneville Dam**
28 **Extended**

29 Adopted October 26, 2009; effective October 27, 2009 through October 31, 2009.
30 Amended rule sets two new fishing periods for the ongoing late fall salmon fishery in the
31 mainstem Columbia River for the commercial harvest, retention and sales of adult
32 salmon beginning October 27, 2009. The proposed seasons provide opportunity for the
33 commercial gill net fleet to harvest part of their pre-season allocation. Revisions are
34 consistent with action taken October 26, 2009 by the Columbia River Compact agencies
35 of Oregon and Washington.

36
37 **635-004-0019**

38 **In season Actions Implemented by the Federal Government for Commercial Groundfish**
39 **Fisheries**

40 Adopted October 28, 2009; effective October 28, 2009 through December 31, 2009.
41 Amended rule adopts in-season actions implemented by the federal government on
42 October 28, 2009 for commercial ground fish fisheries, including changes to cumulative
43 trip limits.

1 **635-004-0019**

2 **Inseason Actions Implemented by the Federal Government for Commercial Petrale**
3 **Fisheries**

4 Adopted October 30, 2009; effective November 2, 2009 through December 31, 2009.
5 Amended rule adopts in-season actions implemented by the federal government on
6 November 1, 2009 for commercial groundfish fisheries, including but not limited to
7 changes in Period 6 cumulative trip limits for petrale sole and changes to RCA
8 boundaries. These changes are in addition to the inseason actions, implemented by the
9 federal government on October 28, 2009, including but not limited to changes in period
10 5 and 6 cumulative trip limits for minor slope rockfish, darkblotched rockfish, arrowtooth
11 flounder, and sablefish.

12
13 **635-016-0090**

14 **Modifications to Southwest Zone Sport Chinook Salmon Regulations for the**
15 **Chetco River**

16 Adopted November 3, 2009; effective November 7, 2009 through December 31, 2009.
17 Amended rule maximizes spawning escapement of fall Chinook salmon in the Chetco
18 River, while continuing to allow sports fishers limited opportunities to harvest fall
19 Chinook salmon in the Chetco Estuary.

20
21 **635-016-0090**

22 **Modifications to Southwest Zone Sport Chinook Salmon Regulations for the**
23 **Chetco River**

24 Adopted November 17, 2009; effective November 19, 2009 through December 31,
25 2009.

26 Amended rule opens a sport Chinook salmon season in the Chetco River that was
27 temporarily closed to protect Chinook stacked up at the head of tide due to unseasonably
28 low flows. These modifications allow opportunity for harvest of both naturally and hatchery
29 produced fall Chinook in the Chetco River mainstem up to rivermile 10.5, and in the
30 Chetco Estuary.

31
32 **635-001-0400**

33 **Confidentiality and Inadmissibility of Mediation Communications**

34 Adopted September 29, 2009; effective October 30, 2009 through April 28, 2010.

35 The Oregon Fish and Wildlife Commission needs temporary mediation rules in order to
36 begin the mediation process with a litigant.

37
38 Temporarily adopting this rule will encourage mediation by limiting the discovery and
39 admissibility of mediation communications in subsequent proceedings. There is
40 currently a matter pending for which mediation is scheduled in early December, 2009.
41 The Commission finds that failure to act promptly in adopting this temporary rule will
42 result in serious prejudice to the interests of the State and the litigant by impeding the
43 use of mediation as a dispute resolution process. The temporary rule to be adopted is
44 the Attorney General's rule on confidentiality of mediation communications, developed
45 pursuant to ORS 36.224(2). The rule must be adopted to enable the parties to the
46 proposed mediation to communicate openly in the mediation.

- 1 a) These rules regarding confidentiality need to be in place so that the Commission can
- 2 enter into mediation with the litigant knowing that its communications will be
- 3 confidential and inadmissible in future adjudicatory proceedings;
- 4
- 5 b) Mediation provides a mutually acceptable resolution process and encourages
- 6 cooperation between the Commission and the litigant.
- 7
- 8 c) Without the confidentiality rule in place, both the Commission and the litigant may
- 9 jeopardize their legal position by participating in mediation.

10
 11 Commissioner Skip Klarquist asked for clarification of 635-001-0400. Council Steve
 12 Sanders said this is in relation to a pending litigation case and he was not able to
 13 discuss the details in a public forum.

14
 15 *Action: Commissioner Edge moved to ratify 17 temporary rules as written.*
 16 *Commissioner Smith seconded the motion, and the motion carried unanimously.*

17
 18 **PUBLIC FORUM**

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

Charles Close Salem, OR	Charles Close testified in support of a combined cougar/bear tag. It could be included in the Sports Pack, and would lower the price. In regard to turkey tags, he proposed the option of selecting a fall tag or a spring tag. Chair Rae asked staff to look at Mr. Close's suggestions for the 2011 season.
Dale Ballard Molalla, OR	Dale Ballard, from the Coastal Conservation Association Oregon, voiced concern with the serious decline of all age classes of white sturgeon in the Columbia River (see written testimony in Exhibit I). To reverse this decline, he asked the Commission to discontinue use of population point estimates, develop a lower harvest rate, and set a harvest rate that encourages population growth.

23
 24 Chair Rae said the Commission looks forward to working with Ballard as a volunteer
 25 with Access & Habitat. She recessed the Commission for a 10 minute break, and
 26 reconvened the meeting at 9:25 a.m.

27
 28 **Exhibit I: GROUND FISH REGULATIONS**

1 **Commissioner John Englund declared a potential conflict of interest in that his**
2 **company sells commercial fishing gear. Chair Rae said this does not prohibit**
3 **him from participating in the discussion or the vote.**
4

5 Gway Kirchner, Marine Fisheries Section Manager, discussed the 2008 Commercial
6 Nearshore Fishery logbook compliance. She said 126 Black and Blue permits were
7 issued, slightly down from 2007. Nearly all harvest caps were maintained. Logbook
8 compliance was slightly down from 70% to just over 67%. Kirchner discussed the 2010
9 Commercial Nearshore Groundfish and Green Sturgeon Fishery Regulations. Federal
10 regulations are set first, and were adopted with no language changes for 2010. There
11 are no proposed changes for the sport groundfish regulations. Commercial nearshore
12 regulation changes have to do with trip limits. Kirchner discussed regulations having to
13 do with four blackrock fish management zones. She discussed the regulations for green
14 sturgeon, and said staff recommends all the recommendations in Attachment 3.
15

16 **Public Testimony:**

Ken Jewell Garibaldi, OR	Ken Jewell, a commercial fisherman, supports raising the trip limit from 200 lbs. to 300 lbs. It would save 33% on fuel costs.
Paul Meyer Garibaldi, OR	Paul Meyer, a commercial fisherman, supports the proposed rise in the trip area limit.
Leonard Trotter Rockaway, OR	Leonard Trotter, a commercial fisherman, supports the rise in the area limit; the change will help fish buyers and consumers. He has spoken with charter and sport fishers in the area and they have no problem with the changes.
Terry N. Thompson Newport, OR	Terry Thompson supports this rule change since the prices of fuel and fish are increasing. He said this fishery is profitable to the area; the tourist industry will also benefit from the rule changes.

17
18 *Action: Commissioner Edge moved to adopt the recommended 2010*
19 *Commercial Groundfish Regulations as proposed by staff in Attachment 3.*
20 *Commissioner Smith seconded the motion, and the motion was carried*
21 *unanimously.*
22

23 Commissioner Kerns asked about a research project regarding the collection of seal
24 scat. Kirchner said that study was held in Alsea Bay; staff identified the species being
25 eaten by seals. Steve Williams said the study is complete, although there are other
26 ongoing studies of this nature in the state. Commissioner Kerns asked for the findings of
27 this study. Williams said staff will report back to the Commission with data on this study.
28

**Exhibit J: SUSPENSION OF THE DEVELOPMENTAL FISHERIES
PROGRAM AND ANNUAL REVIEW**

1 Kelly Corbett, Developmental Fisheries Assistant Project Leader, proposed options for
 2 suspending the Developmental Fisheries Program. The program received insufficient
 3 funding from the Legislature to continue a staffed and functioning program in the 2009-
 4 11 biennium. She discussed staff recommendations for the following issues:

- 5 • Issue 1: Swordfish
- 6 • Issue 2: Box crab
- 7 • Issue 3: Northern anchovy and Pacific herring
- 8 • Issue 4: Spot prawn
- 9 • Issue 5: Hagfish. Corbett noted a correction in the rule Options in Attachment 1,
 10 Agenda Item Summary, for Issue 5 (see page 6). She said OAR 635-006-0850(1)
 11 (a)(N) should read OAR 635-006- 0850(1)(a)(M).
- 12 • Issue 6: Marine snails
- 13 • Issue 7: Smelt

14
 15 Corbett said depending upon the existence of other state or federal management, staff
 16 recommends removing box crab, herring, spot prawn and hagfish from the “A” list to the
 17 “B” list, and moving Swordfish and anchovy to the “C” list. Hagfish is the only species
 18 that includes proposed additional provisions: a harvest guideline and gear limits. Each
 19 of these fisheries would effectively become open fisheries. She said staff recommends
 20 removing Marine snails from the Developmental Fisheries Program, which would close
 21 the fishery, and removing all fives species of Smelt off the list.

22
 23 Chair Rae asked for clarification on the rule change that Corbett had noted. Corbett
 24 referred to page 6, Issue 5 – Hagfish, and said the rule should read (1)(a)(M) and not
 25 (N). Chair Rae said so the correction is not in the rule itself but just in the Exhibit?
 26 Corbett said yes, it is correctly listed in the rule (but not in Attachment 1).

27
 28 **Public Testimony:**

<p>Ryan Kapp Bellingham, WA</p>	<p>Ryan Kapp, a fisherman out of Astoria, submitted written testimony. He has fished anchovies since 2002, and is planning to develop and expand the product. He is concerned that his investments will be in jeopardy without oversight by the Department. He asked the Commission to provide more time so he could prepare a proposal.</p> <p>Chair Rae asked if Kapp considered patenting his idea. Kapp said no; there is relatively low interest in the fishery; although he anticipates this will change.</p> <p>Commissioner Englund asked what Kapp meant by wanting more time with the staff. Kapp said he needs more time to shape a package that would suit us, the department and the Commission. He hopes to be prepared with options in June.</p>
<p>Ben Enticknap Portland, OR</p>	<p>Ben Enticknap, spoke on behalf of Oceania, a nonprofit ocean conservation group. He disagrees with moving developmental</p>

	<p>fisheries from management context to open access context. On other issues:</p> <ul style="list-style-type: none"> • Swordfish—he doesn't support the rules as proposed; he supports closing this fishery. • Northern anchovy—doesn't support the proposal; he requested a delay in taking action. • Pacific herring—doesn't support staff's recommendation. • Smelt—he supports staff's recommendation. He would like to see development of a forage fish plan that recognizes the importance of these species in the ecosystem. <p>Commissioner Englund asked about the issue of limited entry. Enticknap said having a framework plan in place would be helpful rather than open access. Commissioner Smith said he supports a delay in making a proposal; we cannot afford to go completely into open access.</p>
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1
2 Curt Melcher, Deputy Director, said this program was funded with state General Fund
3 dollars, and generates very little revenue of its own. During the 2009 Legislative
4 Session, staff was clear that if the funding were eliminated for this program, these
5 fisheries would come out of the Developmental Fisheries Program, and staff would not
6 continue the program. He said this gives the fishermen the option to continue to pursue
7 those fisheries. Open access should not change the end picture.

8
9 A lengthy discussion followed on the relationship between anchovy and sardine
10 fisheries. Chair Rae noted the importance of this discussion and the Department's
11 responsibilities with the General Funded fisheries. She said some of these are not just
12 social issues but a concern over the resource itself.

13
14 Chair Rae referred to Attachment 3, page 6, and said the Commission's legal council
15 has notified them to a change in the Proposed Administrative Rules, **635-004-0100**
16 **Swordfish and Thresher Shark Fishery**. She said in Subsection (1) the end of the
17 sentence "section (2) of this rule", it should read "section (3) of this rule".

18
19 Council Steve Sanders clarified it should be in Subsection (4) that the reference would
20 be switched rather than Subsection (1). Subsection (4) states it is unlawful to buy
21 except from a vessel for which a permit is required by Section (3). Sanders said the
22 reference in Section (1) is okay.

23
24 Chair Rae stated for the record that the only correction is in Section (4) of Administrative
25 Rule -0100, Subsection (4), where it talks about "... for which the permit required in
26 section (2) of this rule..." that is where it should read "...section (3)..."

27
28 Commissioner Edge did not want to change staff's recommendations on the anchovy.
29 He doesn't think Mr. Knapp's investments are at risk, and didn't see any reason to keep
30 the swordfish fishery open; no one has participated in it and only one person

1 participates in the thresher shark fishery. He proposed a motion to close the swordfish
2 fishery and accept the rest of staff's recommendations.

3
4 Chair Rae asked staff what the consequence would be of that proposed motion.

5
6 Kirchner said if the Commission closed the swordfish fishery she recommends closing
7 thresher shark too. She said staff can reopen a closed fishery after they have
8 appropriate information for that fishery. Chair Rae asked if the interest was in thresher
9 shark or the swordfish. Kirchner said there is interest in thresher shark; however, they
10 are caught together. One of the limits on swordfish is that staff has a ratio limit on
11 thresher shark, which dissuades individuals from trying swordfish.

12
13 Commissioner Edge said the proposed rule already does that. Councilor Sanders said
14 in Section (1) there was a tie in a geographical area, and asked if Commissioner Edge
15 meant to eliminate all of 635-004-0100. Commissioner Edge said if the Commission
16 closed swordfish it was linked together with thresher shark because Section (1) links
17 them together in a geographic area. He supports closing both fisheries.

18
19 Kirchner said if the Commission is interested in closing swordfish and taking the
20 associated action with thresher shark, the staff can do so by removing swordfish from
21 the Developmental Fisheries list and adjusting the regulations under 635-004-0100.

22
23 Chair Rae asked the Commission if there was support for Commissioner's Edge
24 proposed motion. Commissioners Levy, Smith and Klarquist supported Edge's motion.
25 Commissioners Kerns and Englund, and Chair Rae supported the rules proposed by
26 staff.

27
28 Chair Rae asked Commissioner Edge to make a motion. If his motion prevails and both
29 fisheries are voted off the list it requires modifications to the Administrative Rules before
30 the Commission. The Commission will give staff time to rework those rules up as a
31 motion.

32
33 *Action: Commissioner Edge moved to remove swordfish and thresher shark*
34 *from the development list. Commissioner Levy seconded the motion. Motion*
35 *passed by a 4-3 vote. Voting Aye: Commissioners Edge, Smith, Klarquist, and*
36 *Levy. Voting Nay: Commissioners Kerns and Englund, and Chair Rae.*

37
38 Chair Rae asked the Commission if they had any more issues or changes for staff.

39
40 Commissioner Englund said the Commission is prepared to move right away on the
41 anchovy issue. If there are a lot of participants then that could cause some problems.
42 He said anchovies are being moved to Category C which is an open fishery. If this
43 Commission can put a check into something that takes place, he can go for that but he's
44 cautious in the start up. Discussion followed about a limited entry. Deputy Director
45 Melcher said if the interest expands, the department will kick off a limited entry process
46 and determine how many vessels or individuals are eligible. Chair Rae said this is how

1 the Commission struggles in eliminating fisheries and how it affects one or two
2 individuals.

3
4 Chair Rae asked Kirchner to take swordfish and thresher sharks out of the
5 Administrative Rules and to confer with Council. She stated for the record that the
6 Commission was recessing their discussion on Exhibit J with no rulemaking action
7 taken at this time and would move to Exhibit K for staff presentation on the Marine
8 Reserves rulemaking.

9
Exhibit K: MARINE RESERVES RULEMAKING

10 Ed Bowles, Fish Division Administrator, accompanied by Juna Hickner and Cristen Don,
11 gave a slide presentation on Oregon Marine Reserves Rulemaking for Otter Rock and
12 Redfish Rocks. He said the Ocean Policy Advisory Council (OPAC) was a key part of
13 this extensive public process to create these two pilot marine reserves. The OPAC
14 recommendations resulted in HB 3013. Interagency coordination has been intensive
15 because it is multi-jurisdictional. Public involvement has been heavy, with members of
16 the public testifying at public hearings and before the Legislature.

17
18 Bowles said public comment was held on consistency with the Siletz Tribal Agreement,
19 and among government agencies. Comment was also held on “disturbance” related to
20 non-extractive activities, and on enforcement and penalties. There were no public
21 comments on hunting within the reserves. There are three other sites under
22 consideration. Bowles said the proposed Administrative Rules will take effect June 30,
23 2011. Taking of any fish or wildlife will be prohibited. Scientific research will be allowed.

24
25 **Public Testimony:**

Peg Reagan Gold Beach, OR	Peg Reagan, Conservation Leaders Network, has been involved in the Marine Reserve process since 2002. She supports the rules being considered today. She understands that the Oregon Department of State Lands is responsible for establishing the boundaries of these sites but asked staff to adjust the boundaries of the Otto Rock site so it has moderate ecological value or she questions whether it's worth doing.
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26
27 At 11:45 a.m., Chair Rae returned to Exhibit J concerning Developmental Fisheries and
28 said the Commission would vote on the amended rules given their earlier action.

29
30 Kelly Corbett directed the Commission's attention to amended rules **635-004-0100 –**
31 **Thresher Shark Fishery**, and **635-004-0110 – Season**, on page 6 in the **Revised**
32 **Attachment 3**. She said staff amended these rules per the Commission's direction and
33 removed all of the adjustments to these rules. Corbett said the Commission does not
34 need to adopt these rules.

35
36 Chair Rae asked for clarification on 635-004-0100 – Thresher Shark Fishery. Councilor
37 Sanders said the rule discusses fishing gear.

38

1 Chair Rae continued, gillnets can be used for the taking of thresher shark in this
2 particular geographical area that is referenced by latitude or nautical miles at such times
3 prescribed by 635-004-0110 - Season. She said -0110 states, It is *unlawful* to take
4 thresher shark for commercial purposes with gillnets. Councilor Sanders said that
5 originally -0110 would set the months during which the harvest could occur, but
6 because we have closed it staff took the actual reference to a time period out; and the
7 implied time period is never.

8
9 Corbett added that -0100 states that if the season is open you may use gillnets to take
10 thresher sharks in this area. She said -0110 says that the season is not currently open
11 anytime. She discussed staff's other adjustments:

- 12 • 635-006-0020 (page 6): Staff removed the language that added a provision
13 limiting the number of experimental gear permits that could be issued for drift
14 gillnets. The change reverts back to the original language, no adoption needed.
- 15 • 635-006-0850 (page 9): Staff removed "(Z) Swordfish (*Xiphias gladius*)" from the
16 Developmental Fisheries Species List; thresher shark was never on the list.

17
18 Chair Rae asked for a motion.

19
20 *Action: Commissioner Edge moved to adopt the recommended changes to the*
21 *Developmental Fisheries Species list and the other associated regulations as*
22 *proposed by staff and amended as directed by the Commission. Commissioner*
23 *Levy seconded the motion. Motion carried by a vote of 6-1. Ayes:*
24 *Commissioners Edge, Kerns, Klarquist, Levy, Smith, and Chair Rae. Nays:*
25 *Commissioner Englund.*

26
27 Chair Rae recessed the meeting at 11:50 a.m. for lunch, and reconvened at 1:00 p.m.
28 She returned to Exhibit K and continued the Public Testimony.

29
30 **PUBLIC TESTIMONY - continued for EXHIBIT K**

John Holloway Portland, OR	John Holloway, Co-chair of Oregon Recreational Fishing Alliance, Oregon Chapter, submitted written comments. He doesn't support the proposed rules; they don't comply with HB 3013. He doesn't feel that ODFW is working within its authority, and says the rules do not support the OPAC recommendations.
Dean Ferguson Astoria, OR	Dean Ferguson, Chair of Clatsop County Marine Reserve Advisory Committee, submitted written comments and said he doesn't support the proposed rules. His calculations show that the cost for the marine reserves would be about \$1.1 million per year. Changes need to be made to the proposed rules to bring these rules in line with OPAC's recommendations.
Terry Thompson Lincoln County, OR	Terry Thompson, Lincoln County Commissioner and OPAC member, said he's worked with Depoe Bay and hasn't found any opposition from the fleet to the proposed rules with the

	<p>exception of “disturb”. The baseline work is absolutely essential to measure the effects of the marine reserves. He has no problem with the rules.</p> <p>Commissioner Englund asked if the word “disturb” came out of OPAC. Thompson said surfing is one of the main issues, and taking agates from the beach. The important thing is to keep the flexibility in your rulemaking process as possible.</p>
Ben Mayhew Carlton, OR	Ben Mayhew submitted written comments. He supports allowing zero disturbances in the reserves. Also, he wondered about enforcement of people using boats. He said reserves are supposed to be for research and habitat.
Mike Herbel Salem, OR	Mike Herbel submitted written comments and said he agrees with prior comments in regard to the disturbance issue. He referenced an OPAC Marine Reserve recommendations document dated August 19, 2008, that includes a definition of disturbance. He asked the Commission to support OPAC’s recommendations.
Leesa Cobb Port Orford, OR	<p>Leesa Cobb, Director of Port Orford Ocean Resource Team, said Port Orford is one of the pilot reserves. The team is excited to move forward and supports ODFW rules as proposed by staff. She gave an update on the project, and said the key to success of such reserves is a feeling of ownership by the community. Their first science project is acoustic tagging by an OSU graduate student.</p> <p>Commissioner Englund asked for Cobb’s opinion regarding “disturbance”. Cobb said OPAC discussed it extensively. The final word was that things like surfing and diving do not create a disturbance, and that is the position Port Orford took.</p>
Gus Gates Florence, OR	Gus Gates, Oregon Policy Coordinator for Surfrider Foundation, thanked ODFW staff, Port Orford Resource Team, and OPAC for doing a good job. He realizes the social and economic benefits of the nearshore reserve. Concerning disturbance, he is disappointed that the clarification is not in the rules. He said we should not restrict beach access.
Ben Enticknap Portland, OR	Ben Enticknap, on behalf of Oceana, submitted a map and analysis for the public record. He supports the rules as proposed by staff. He said more work is needed for the management of the area; for instance, continue to build marine protected area. He said there are a lot of threats to the ocean, including global warming and ocean acidification.

	These reserves help the ecosystem to be resilient.
Al Elkins Wilsonville, OR	Al Elkins, OHA, was not aware of the ban on hunting in the marine reserve; he learned about it from a news reporter. He was told repeatedly that there would not be a hunting ban. He looks forward to working with the department on this issue, and on future sites in relation to how it affects hunting.
Susan Allen Portland, OR	Susan Allen, Director for Our Ocean, thanked staff for their hard work. They support the draft rules as proposed by staff; it represents a compromise. During rulemaking, they advocated to ensure as much access to the beach as possible. The coalition has a position on existing permits.

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Chair Rae asked Bowles to address the issue of disturbance.

Bowles said the intent is to deal with disturbance on a site-specific basis; this is of particular importance for future sites. If it becomes clear that activities will alter the habitats, staff will modify the rules accordingly.

Commissioner Englund said the definition of “disturbance” belongs in the management plan. He expressed concern about the implementation on June 30, 2011. Bowles said there are two separate issues regarding that date: disturbance, and evaluating baseline information.

Chair Rae asked Bowles to address how we measure success and define success in regard to evaluating baseline information. Bowles said we have established a year to collect very minimal baseline information. The reason these are not exhaustive baseline studies is, that part of the use is references to areas that are fished. The Executive Order required these areas not to be major fishing areas.

Commissioner Englund asked if there has there been any success in discussing issues of tribal rights in these reserves. Chair Rae referred to a letter in the packet from the Siletz Tribe. It is our hope that they get engaged more heavily. Bowles said he was not aware of any permits through the current regulatory process.

Commissioner Edge asked about staff’s plan to roll these plans out. Cristen Don said staff finalized a Marine Reserves working plan and timeline; currently on ODFW’s website. Staff will give a progress report to the Legislature in November 2010. They will work with additional state agencies including OSP on enforcement. There will be a public comment period for the management plan.

Action: Commissioner Smith moved to adopt OAR 635-012-0020 through 0060 as recommended by staff and listed in Attachment 6 of this exhibit. Commissioner Edge seconded the motion, and the motion was carried unanimously.

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Exhibit L: MULE DEER INITIATIVE BRIEFING--INFORMATIONAL

Thomas Thornton, Game Program Manager, reported on the *Draft Oregon's Mule Deer Initiative (MDI)*. The goal is to improve the population of mule deer in the Heppner, Maury, Murderer's Creek, Steens Mountain, and Warner Units. The draft gives management objectives and looks at social constraints; it considers habitat and other factors. Objectives are divided into six categories, and strategies have been developed for each objective. He said all of the identified actions would cost millions of dollars, but other agencies (e.g., BLM) will assist with some of these actions. Thornton said the draft discusses factors that have changed globally over the years that have affected the herds; including juniper encroachment, cougar populations, and diseases. The plan does not contain a lot of details about monitoring. There are two levels for monitoring: habitat and deer population. He discussed mule deer initiatives in other states.

Public Testimony:

Ken Hand Klamath Falls, OR	Ken Hand, MDI Committee, thanked ODFW for getting involved. Regarding the timeline, the teams finished their meetings in May and he would like to see this implemented. He hopes there is funding available despite the economy. He wants displays to be used at banquets and sports shows for education that explain the MDI and to promote involvement.
Al Elkins Wilsonville, OR	Al Elkins, OHA, said OHA President Fred Craig thanks ODFW for doing an excellent job in creating this plan. The U.S. Forest Service and BLM have obtained funds and are in the planning process to improve big game habitat. Juniper removal and weed control are two of the projects.

Thornton said the MDI is a priority for Director Elicker. The Department is working closely with federal, state and tribal land management partners to develop the habitat piece, and is currently developing the policy option package for the next biennium.

Chair Rae said she would like the Commission to set a timeframe for getting revision information to Thornton by the end of the year. She thanked Thornton for his work.

OTHER BUSINESS. None.

ADJOURN

Chair Marla Rae adjourned the meeting at 2:35 p.m.