



Oregon Fish and Wildlife Commission Minutes

Meeting: December 6, 2012 – 1:00 p.m.
Holiday Inn Portland Airport
Willamette Room
8439 NE Columbia Blvd.
Portland, Oregon 97220

Meeting: December 7, 2012 – 8:00 a.m.
Holiday Inn Portland Airport
Willamette Room
8439 NE Columbia Blvd.
Portland, Oregon 97220

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

Bobby Levy, Chair
Michael Finley, Vice-Chair
Bob Webber, Commissioner
Holly Akenson, Commissioner
Laura Anderson, Commissioner

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

8 MEETING

9 On Thursday, December 6, 2012 at 1:00 p.m., Chair Bobby Levy called the Oregon Fish
10 and Wildlife Commission (the Commission) meeting to order.
11

12 Director Roy Elicker announced that the Oregon Department of Fish and Wildlife
13 (ODFW) was unable to video stream the meeting today and tomorrow because the
14 bandwidth at the site did not allow the equipment to connect with the Internet.
15

16 DIRECTOR'S REPORT

17 **Field Reports.** Chair Levy said no oral field reports because the agenda is so short.
18

19 Adopt Temporary Rules

20 Director Elicker asked the Commission to adopt the two temporary rules noted on page 1
21 of the tan agenda: OAR 635-008-0151 and OAR 635-005-0465.
22

23 1. 635-008-0151

24 **Procedures for Issuance and Enforcement of Parking Permits for Department** 25 **Wildlife Areas**

26 Adopted November 13, 2012: effective November 13, 2012 through May 10, 2013.

27 The rule did not specify that a citation issued to an unattended vehicle would be issued
28 to the registered owner. This temporary rule clarifies law enforcement officers' authority
29 to issue citations to the registered owner of a vehicle that is in violation of OAR 635-008-
30 0148 through OAR 635-008-0151.
31

32 2. 635-005-0465

33 **Season Opening for the Ocean Commercial Dungeness Crab Fishery Delayed**

34 Adopted December 1, 2012: effective December 1, 2012 through December 31, 2012.

35 This amended rule delays the opening of the 2012 commercial ocean Dungeness crab
36 fishing season from December 1 until December 16, 2012 in accordance with the Tri-

1 State Memorandum-Of-Understanding and Preseason Testing Protocol.

2
3 *Action: Commissioner Bob Webber moved to approve the two administrative*
4 *temporary rules OAR 635-08-0151 and 635-005-0465 set forth in the*
5 *Commission's agenda. Commissioner Mike Finley seconded the motion, and the*
6 *motion carried unanimously by a vote of five.*

7
8 **Exhibit A: COMMISSION MINUTES**

9 Director Elicker announced that Executive Assistant Teri Kucera had the flu and the
10 minutes would be deferred to the next Commission meeting.

11
12 Chair Levy said Commissioner Wolley was excused from today's meeting as well, but
13 plans on being at the Commission meeting tomorrow.

14
15 **Exhibit B: WILDLIFE INTEGRITY RULES FOR SPECIES CLASSIFICATION OF**
16 **TIGER MUSKIE, ASIAN CARP AND QUAGGA/ZEBRA MUSSELS**

17 Rick Boatner, Invasive Species and Wildlife Integrity Coordinator, said staff would ask
18 the Commission to adopt amended rules to:

- 19 1. Reclassify Tiger Muskie (TM) from a prohibited species to a controlled species in
20 Phillip Reservoir only.
- 21 2. List Asian Carp as a prohibited species in Oregon.
- 22 3. Change Quagga/Zebra Mussel temporary rule "whether live or dead" to a
23 permanent rule.

24
25 **Reclassify Tiger Muskie (TM)**

26 Rhine Messmer, Recreational Fisheries Program Manager, said Tiger Muskie (TM) is
27 classified as a prohibited species. Director Elicker appoints members to the Wildlife
28 Integrity Review Panel (WIRP) who developed the recommendations before the
29 Commission today. WIRP define this proposal as high risk because TM is likely to eat
30 fish and live and thrive in the reservoir that makes it a good species for perch control.
31 There was some concern about humans and the transfer of TM out of the system. Terry
32 Schrader, Warmwater Fish Biologist, and Tim Bailey have done a thorough assessment
33 of that and thinks this is a low risk activity.

34
35 Tim Bailey, LaGrande District Fish Biologist, said the objective of this introduction is to
36 biologically control the abundance of illegally introduced yellow perch in Phillips
37 Reservoir and to restore the trout fishery by introducing juvenile TM. Staff would annually
38 release 30,000 to 40,000 TM fry for an evaluation period of five years. Staff hopes to
39 attain a density of one to two adult TM per acre, and will monitor other species and
40 undergo fishing sampling and creel survey to document the response to the fishery.
41 Bailey said yellow perch were detected in 1991 and make up 77% of the population; only
42 three percent of rainbow trout are left. Prior to perch introduction the reservoir averaged
43 30,000 angler visits in a year, staff estimated 3,000 angler visits in 2010. Staff is writing a
44 Management Plan. He said TM are highly piscivorous and are natural predators of yellow
45 perch. If results are not favorable stocking of TM will be discontinued. He discussed risk
46 factors and said staff believes risk to native fish and wildlife is low, and there will be a
47 significant increase in angler participation that will help Baker County's economy.

1
2 **Asian Carps**

3 Rick Boatner said Asian Carp are in direct competition with native species; they destroy
4 the grasses and vegetation and can grow to 40-50 pounds. The Asian Carp group has
5 five species in our Controlled Species rules. Staff is asking the Commission to prohibit
6 four of them. If we don't make them prohibited in the Division 56 rules they could enter
7 Oregon as an aquaria fish or a live food fish. He asked the Commission to list in the rules
8 as prohibited:

- 9 1. Black Carp (*Mylopharyngodon piceus*).
10 2. Bighead Carp (*Hypophthalmichthys nobilis*).
11 3. Silver Carp (*H. molitrix*).
12 4. Large Scale Silver Carp (*H. harmandi*).
13

14 **Quagga/Zebra Mussels**

15 Rick Boatner displayed examples of Quagga mussels found on boats during the summer
16 inspection program. He said before the current rule went into effect Division 56 only
17 referred to the transport of live mussels that made it impossible for law enforcement
18 officers to have probable cause to stop a boat if they saw mussels on it. On August 31,
19 2012, OAR 635-056-0050 went into effect that added "whether live or dead" so law
20 enforcement legally had probable cause to pull a vessel or trailer over for inspection. He
21 asked the Commission to make OAR 635-056-0050 a permanent rule.
22

23 **Public Testimony:** There was no public testimony.
24

25 *Action: Commissioner Webber moved to adopt staff recommendations to amend*
26 *Wildlife Integrity Rules OAR 635-056-0075 as shown by staff on Attachment 3.*
27 *Commissioner Akenson seconded the motion, and the motion carried*
28 *unanimously by a vote of five.*
29

30 **Exhibit C: Access and Habitat Projects/Board Chair and Hunter Representative**
31 **Appointments**

32 Matthew Keenan, Access and Habitat (A&H) Program Coordinator, talked about two
33 current Board members who applied for the Board chair position:

- 34 1. Barry DelCurto, a private rancher, Halfway, Oregon (OR).
35 2. James Morrell, a retired naval officer, Sisters, OR.
36

37 Chair Levy asked Keenan to clarify how many total hunter representatives there are.
38 Keenan said there are seven board members; one is the board chair who serves in
39 addition to three hunter representatives and the three landowner representatives.
40

41 **Public Testimony:** There was no public testimony.
42

43 *Action: Commissioner Akenson moved to appoint Berry DelCurto as the Chair of*
44 *the Access and Habitat Board. Commissioner Anderson seconded the motion,*
45 *and Commissioners Akenson, Anderson, Finley, and Chair Levy voted aye.*
46 *Commissioner Webber voted nay. The vote passed by a vote of four.*
47

1 Commissioner Webber said his nay vote was not because DelCurto is not well-qualified.
2 He knows Mr. Morrell and feels he is highly qualified also.

3
4 Keenan presented the appointment of two hunter representatives to the A&H Board. He
5 discussed the selection process, current A&H Board members, and the six geographical
6 regions in the A&H Program during a slide presentation. He presented five candidates:

- 7 1. Dale Ballard, retired firefighter from Molalla, OR.
- 8 2. Paul Donheffner, retired director of Oregon State Marine Board, Salem, OR.
- 9 3. Chad Klinkenborg, Regional Director of Rocky Mountain Elk Foundation, Hood
10 River, OR.
- 11 4. James Morrell, retired naval officer, Salem, OR.
- 12 5. David Stiefvater, retired electrician, Ontario, OR.

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

15
16 Commissioner Webber said because we appointed a landowner representative as Chair
17 will we have to appoint another landowner representative? Keenan said correct. Staff will
18 present an application to the Commission at their March meeting to fill that position.
19 Commissioner Webber asked staff to look at the southwest area. Keenan said staff will
20 try to get geographic diversity in the applicants.

21
22 *Action: Commissioner Webber moved to appoint James Morrell to serve a four-*
23 *year term as Hunter Representative on the Access and Habitat Board.*
24 *Commissioner Finley seconded the motion, and the motion carried unanimously*
25 *by a vote of five.*

26
27 *Action: Commissioner Akenson moved to appoint David Stiefvater to serve a four-*
28 *year term as Hunter Representative on the Access and Habitat Board.*
29 *Commissioner Anderson seconded the motion, and the motion carried*
30 *unanimously by a vote of five.*

31
32 Director Elicker and Chair Levy left the meeting for a phone call with the Governor about
33 the Commission's meeting on Lower Columbia River fisheries.

34 35 **Exhibit D: Eel Lake/Coquille Valley Land Exchange-**

36 Larry Cooper, Southwest Region Manager, introduced Kelly Moore, Northwest Fisheries
37 Research Program Director, and Steve Denney, South Coast Conservation Director for
38 The Nature Conservancy (TNC). Cooper during a PowerPoint presentation discussed
39 the Coquille land exchange and said it was a three-tiered process:

- 40 1. Land exchange to be discussed today.
- 41 2. Restoration if land exchange comes to fruition.
- 42 3. Tidegates.

43
44 Cooper said the Commission will be asked to determine if ODFW moves to close on the
45 land exchange. Cooper referred to a map and said the land trade is second growth
46 timber on Eel Lake for wetlands on Coquille Valley that have greater fish and wildlife
47 values and provides better land for public access. At Eel Lake 1,908 acres was

1 purchased in 1940 by the Oregon Game and Fish Commission for \$10,500. Initially the
2 land was logged during World War I and again in 1990, and was initially purchased for
3 coastal cutthroat hatchery production that was later determined not to be needed. ODFW
4 sold some of the property in 1962 and contributed 500 acres to Tugman State Park.
5

6 The Lakeside Municipal Water Supply sits at the arm of Eel Lake. He said staff created a
7 local advisory committee to discuss the objectives for the protection of the water supply
8 for the City of Lakeside. The following commitments were made:

- 9 1. Build a 200-foot minimum wide buffer, about 197 acres, and put into a
10 conservation easement in concert with Bandon Biota, LLC, who ODFW proposes
11 to trade this property to. Protect the view shed at Tugman State Park from any
12 future logging with a visual buffer. Buffer surveyed and recorded.
- 13 2. Establish a deed restriction prohibiting housing or structures.
- 14 3. When the land was logged ODFW vacated an existing easement through the City
15 of Lakeside and replaced it with another easement farther to the north so log
16 trucks could get safely out to the highway.
- 17 4. Resolution passed by City of Lakeside that supports giving conservation
18 easement to Lakeside Water Board (in the Commission packet).
19

20 Cooper described the project area on the map and noted facts about Coquille Estuary:

- 21 • Oregon's second largest estuary (~40 miles).
- 22 • Historically about 17,450 acres of non-diked wetlands.
- 23 • Today less than 800 undiked acres.
- 24 • Critical for migrating waterfowl and shorebirds.
- 25 • Critical habitat for rearing coho and Chinook salmon.
26

27 Cooper said other species would benefit from this project: shorebirds/waterfowl, raptors,
28 furbearers, tropical migrants, salmon, cutthroat trout, and lamprey. Beavers are
29 beneficial to restoration but can be very damaging so staff will monitor them and also
30 watch nutria, an invasive species. He said historically 417,000 returning Coho salmon
31 occurred based on intrinsic potential habitat modeling. Today around 55,700 are
32 returning. Looking at the 10-year average it is closer to 21,000 which fluctuated between
33 the 55,000 down to as low as 8,000 returning in the last 10-years. Staff estimates key
34 winter refuge area where the small juvenile salmon get swept out because they don't
35 have places to hide in slower water to be 75% of the loss. The Coquille River Valley is
36 the most important coastal waterfowl area between San Francisco Bay and Puget Sound
37 based on mid-winter fowl surveys. It is the largest concentration of dabbling ducks and
38 virtually all the tundra swans along the Oregon coast. It is rated a high priority in a
39 federal ranking on a national scale for waterfowl habitat and it is number one on the
40 same rankings for Oregon. Currently this area is diked and drained; cattle grazing keep
41 the vegetation manicured. It produces excellent forage for waterfowl in the winter.
42

43 Cooper noted the 223-acre Beaver Slough property on the map and 100-foot buffer
44 upland along one of the slough edges. He said even though attempts were made early in
45 settlement to dike and drain this we think this represents the pre-settlement conditions
46 of vegetation in the valley. Staff is working with the Coaledo Drainage District to look at
47 large wood placement. Cooper said one concern was that we were going to put wood in

1 the stream itself and that is not the case. Staff is looking to put wood up into the upland
2 area, anchoring it so it won't move, and have it extend out into the wetland area itself.
3 Staff wants to keep a good handle on invasive species control not only for plants but also
4 the nutria if this comes to fruition.
5

6 Cooper said the 287-acre Winter Lake parcel is by Hwy. 42 and this is where most of the
7 restoration will occur. The area is being grazed by cattle and staff is working with the
8 grazers to continue that to keep the vegetation in check until restoration of habitat from
9 replanting starts. Once replanting is started, the replanted areas will be fenced out so the
10 cattle won't damage them. In those areas where it is not being replanted the vegetation
11 needs to be kept in check, so grazing will continue and then get less and less.
12

13 Cooper talked about drainage ditches that come to the tidegates then flow out and hit the
14 main river. Staff is looking at putting China Camp Creek back into the sinuosity of the
15 existing channels. In the Garden Valley piece the vegetation was very high and dense.
16 The Winter Lake LIDAR (Light Imaging Detection and Radar) said it was a certain
17 elevation but when staff did the ground truthing LIDAR wasn't seeing through that dense
18 vegetation. Some errors were made there that have been corrected and the entire area
19 has been ground truthed. Staff plans to:

- 20 • Put the creek back into the existing channels and moving it out through the Duck
21 Club (staff has received permission) out to the Tidegates. The length of China
22 Camp Creek will be extended by 10-miles.
- 23 • Staff will remove three miles of interior dikes.
- 24 • Fill one and half miles of ditches.
- 25 • Plant 240-acres with native wetland trees and shrubs.
- 26 • Do large wood replacement but anchored so they won't move.
- 27 • Invasive Species Control.
28

29 Cooper said the Oregon Conservation Strategy (OCS) has four key habitats; key goals
30 including restoring freshwater and tidal wetlands. If this process is completed staff will:

- 31 • Replace tidegates that don't allow regulation of tidal flow.
- 32 • Remove invasive species and replant with native vegetation.
- 33 • Restore native stream channels.
- 34 • Replace large wood.
35

36 Using a PowerPoint map, Cooper talked about Tidegates. He said the Bandon Biota,
37 LLC, property is within Beaver Slough Drainage District (BSDD) which is different than
38 the Coaledo Drainage District that drains into the Beaver Slough. Staff is working with
39 BSDD to potentially help find funds to replace those current Tidegates with new modern
40 structure called Muted Tidal Regulators (MTR). They are more sophisticated and easier
41 on fish and can be dialed into a particular tide. For example, there is a hydrology study
42 that shows if we move water into our property and keep it only on our piece if you let five
43 or six feet of water come in it will go up and flood out the folks in Garden Valley. He said
44 we are not going to do that, we are going to keep water on our property and that is where
45 the MTR will come in. He said the current Tidegates are fairly old and need to be
46 replaced and if not replaced, it could have catastrophic failure and the whole place goes

1 under tidal influence twice a day every day. Staff will work with BSDD to maximize fish
2 and wildlife benefits and at the same time minimize adverse impacts to the neighbors.

3
4 Cooper noted there were neighbors in the audience that were uncomfortable with what
5 the Department is doing and who want to make sure that they are not adversely affected.
6 He talked about Fisheries Restoration Benefits and said the following numbers represent
7 average ocean conditions when the project has fully matured. It is only for Coho and
8 doesn't have any other fish species:

- 9 • Restored wetlands will produce 11-to-14 returning adult Coho salmon per year per
10 acre.
- 11 • Restoration of the area once complete can produce between 3,200 and 4000
12 returning Coho salmon annually.
- 13 • Estimated value to in-river fisheries is \$2.5 million to \$3.2 million over 20 years.

14
15 Cooper said the project offers greater opportunities to Oregonians for hunting, wildlife
16 viewing, and public access to state lands. Indirectly it includes hunters eating at local
17 restaurants, staying at local hotels, shopping, and buying equipment from local vendors.
18 He discussed Economic Restoration Benefit dollars for the project and based on a
19 document that was produced this year.

- 20 • \$2.6 million to \$3.4 million dollars in economic output related to the project.
- 21 • 18-20 local jobs is estimated based on number of labor hours to complete the
22 restoration work and is equivalent to full-time positions. Indirect benefit from
23 construction workers, local shops, staying at hotels, buying equipment and rocks
24 from local suppliers.

25
26 Other Economic Benefits. Cooper referred to:

- 27 • ORS 496.340 – Payments to Counties in lieu of taxes. ODFW pays taxes for land
28 it owns at the current rate of a private taxable person that would have owned
29 those lands. This statute came into place after 1941 when ODFW bought the Eel
30 Lake property. He said by going through with the land trade ODFW will continue
31 paying taxes in lieu of taxes on the property that we are acquiring as well as the
32 property that would be going back into private ownership now would have to pay
33 taxes on those pieces of property. There is net gain in tax benefit to Douglas and
34 Coos Counties.
- 35 • ORS 477.230 states that ODFW must pay twice the fire assessment on a piece of
36 ground as a private landowner.
- 37 • ORS 547.045 states that ODFW pays drainage district assessment fees like any
38 other landowner in the same drainage district.

39
40 Cooper said this is a collaborative process with benefits to natural resources and
41 agriculture, especially if staff can get help with indentifying grants to work on tidegates
42 for those folks. Many groups were involved and monetary commitments came from
43 multiple groups; e.g., state, federal, Tribal, and private. ODFW is looking to trade 607
44 acres of timberland for 510 acres of wetlands. ODFW is committed that restoration
45 activities will not adversely impact the neighbors and that the county proceeds will
46 actually increase from tax revenues. If ODFW gets to the restoration, staff will put

1 together an area management plan not unlike the 16 Wildlife Area Management plans
2 adopted by the Commission. It is a public process and staff proposes to have a
3 stakeholder committee that would help staff develop that document and bring it to the
4 Commission for approval.

5
6 Kelly Moore, Manager of Fisheries Research Program at Corvallis Research Lab, said
7 he was a member of the team brought together by National Oceanic and Atmospheric
8 Administration (NOAA) fisheries to evaluate the status of Coho and the criteria to
9 evaluate the recovery of Coho on the Oregon coast. He said if you have a question
10 about intrinsic potential that is a pretty simple concept, it is the basic geographic
11 template that is the formation of habitat. In this case, lowlands areas are flat reaches of
12 stream with a broad valley. Given the right habitat conditions, they can be tremendously
13 productive for Coho because they create that winter habitat that has been identified both
14 in the Watershed Basin Study, by NOAA fisheries, and by ODFW assessment as a
15 critical limiting factor for Coho salmon coastwise but in the Coquille in particular. He said
16 this is well in the bounds of where we want to be doing the work.

17
18 Moore said the production numbers, 3,000 to 4,000 fish average, is the best we can do
19 but understand the scope of this project is greater than anything that has already been
20 evaluated experimentally. There is a component of this project to look ahead and see
21 how it responds to these treatments and if we could get that kind of a return. The
22 potential is there for higher in good years and lower during bad years. We had a good
23 return of 55,000 adults in 2011-2012. Those fish have spawned and their juveniles have
24 come out of the gravel. Those little fish are looking for places to live right now and they
25 are struggling to find good homes. He said this exchange will give them better homes.

26
27 Commissioner Anderson said what is the estimated cost of the tidegate improvements?
28 Moore said Fred Messerle is the one who can answer that question. Tidegates are the
29 responsibility of the Drainage District.

30
31 Commissioner Finley said it's a good range to open up ten miles of additional habitat.
32 One thing he knows about restoring wetlands is that sometimes there isn't sufficient
33 materials to fill them. What materials would you bring in to fill the ditches? Cooper said
34 they have not gotten that far in the planning yet. Steve Denney said most will come from
35 existing ditches; he anticipates they would have the same soil type; engineering and
36 design have still not been done.

37
38 **Public Testimony:**

Jim Seeley Bandon, OR	Jim Seeley, Executive Director of Wild Rivers Coast Alliance (WRCA), submitted a letter and said he is representing Mike Keiser, the owner of Bandon Biota, Bandon Dunes Golf Resort, and founder of WRCA. Seeley spoke in support of the Eel Lake/Coquille Valley Land Exchange and asked ODFW to approve the project. He gave a brief history of the wetland. Mike has no profit motive in this land exchange. If profits materialize, he will make those profits available to WRCA related projects. WRCA is a new philanthropic
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	organization funded with the net proceeds from Bandon Preserve Golf Course. He said it is good for conservation, the community, and the economy.
Al Elkins Wilsonville, OR	Al Elkins, Oregon Hunters Association (OHA), spoke in support of the exchange. OHA believes the restoration of these properties will provide opportunities for public access for water fowl hunting and other wildlife recreation. It will also increase fish production, thereby increasing angling opportunities. He said OHA has supported Steve Denney's proposal for a number of years. They applaud ODFW and encouraged the Commission to support the project.
Brad Bales Hillsboro, OR	Brad Bales, Pacific Coast Joint Venture (PCJV), said for 22 years he was with ODFW as their Migratory Game Bird Biologist. He distributed written testimony in support of this exchange. He said the importance of migratory bird habitats in the Coquille Valley have long been recognized by state and federal biologists. This land trade will support various Pacific Flyway Population Plans as well as the Western Mallard Model.
Tom Dwyer Vancouver, WA	Tom Dwyer, Ducks Unlimited (DU) Director of Conservation Programs, supports the exchange. He said DU's mission is to protect and restore water fowl habitat, and to provide hunter access and participation. DU has a long history of working with ODFW improving hunter access and success.
Steve Pennington Coquille, OR	Steve Pennington, landowner and retired school teacher, provided written testimony and two photographs. He said he's lived in this area 44 years and opposes the project because ODFW is ahead of where it needs to be. This affects a lot more land than just the number of acres. He estimates 95% residents oppose this project because: <ol style="list-style-type: none"> 1. No protection for Garden Valley landowners for water drainage. 2. Project is not sound environmentally. He said what is the solution? Leave Garden Valley drainage alone and drain your exchanged land into Beaver Slough below the tidegate. You will then create a wetland which is similar to five other projects downstream and you will have control of the containing dikes. A fact sheet developed by ODFW is misleading. He said the Watershed Association was formed 30 years ago to prevent the state from jumping into poorly designed projects.
Graig Spolek	Graig Spolek, Chair of Oregon Duck Hunters Association

Portland, OR	(ODHA), provided written testimony supporting the exchange. ODHA supports projects that create more ducks and geese and activities that give more public hunting opportunities. This project aligns directly with our mission. He urged the Commission to support this land swap.
James F. Wright Lyons, OR	James Wright, Executive Director of Salmon for Oregon, provided written testimony on behalf of Coos County resident Cam Parry of Parry Associates that supports the exchange. He read, "The project you are considering today gives you the wonderful opportunity to approve the permanent preservation of riparian forest and marsh habitat representing a historic benchmark. Our salmon seasons have helped carry our fragile economy."
Charlie Waterman Bandon, OR	Charlie Waterman, Chair of Coaledo Drainage District (Beaver Slough) spoke in opposition to the exchange. He said from the perspective of a landowner neighboring the project, we feel we will be adversely impacted. There are many advantages to the way the property is now; for example, tremendous agricultural value that provides income and jobs. Duck hunters are allowed into the pastures; a great duck habitat. It is the best fish habitat when they clean out the ditches. What's there today is very important to the economic value of the area. He would like to have an analysis of a baseline today. We don't want to go backwards. He said these tide control structures are open a lot of the time. The rivers overflow their banks, and the tidegates are open, which allow fish to go through. The gates open slowly so the fish can get through. When the tide changes, fish pool up in front of the tide pool structures, and when they open, they swim through. He said Michael Keiser purchased his property for benefit of restoration. He offered to purchase it to keep it as agricultural land. 154,000 pounds of beef are produced there today, and if this goes through, that will be gone.

1
2 Commissioner Webber asked is Beaver Slough controlled by tidegates. Waterman said
3 yes. Commissioner Webber said Mr. Pennington in his written material suggested
4 draining the acreage into Beaver Slough below the tidegate. Waterman said the Beaver
5 Slough tide goes right near the river; ours is half a mile up the creek. The natural channel
6 comes in below that, so you would have river action. That crosses his property. He would
7 have to look at the plan before deciding if he is in favor of that. Commissioner Webber
8 asked if we acquired the property would you be agreeable to analyze draining it across
9 your property. Waterman said he would consider it.

10

<p>Sarah Liljefelt Portland, OR</p>	<p>Sarah Liljefelt, attorney for Schroeder Law Offices, distributed written testimony. Their firm represents Sharon Waterman and neighboring landowners. She looked at ORS 496.146 the authorizing statute for land exchanges that states that when the Commission determines that such sale or exchange would be advantageous to the state wildlife policy and management programs that is when the Commission can sell or exchange property. She said this project is just too uncertain at this point as you heard from the presenters. They don't have figures or studies. She said this project has been moving forward on incorrect assumptions:</p> <ol style="list-style-type: none"> 1. The proposed restoration project will restore historic and natural wetlands and stream channels. 2. Local landowners support the project. They have barely been consulted. 3. The project will not injure neighboring properties. No studies have been done. 4. The project may be implemented under Oregon laws. A drainage district is not authorized to flood the property. 5. One of the tidegates is on the Waterman property. The Watermans have not approved access to their property. She said this project needs more study.
<p>Mike Mader Tenmile, OR</p>	<p>Mike Mader, Tenmile Lakes Watershed Council and City of Lakeside, supports the exchange and is here to talk about the forgotten part of this land swap. He said for 30 years we worked with ODFW staff to protect Eel Lake property for the city's municipal water supply. Your staff did a fantastic job and took all our input for three years. They got measures in place that are twice as much as the Forest Practices Act and got it all surveyed. We are very satisfied with the measures there. He's said their wonderful work at Eel Lake is now in the middle of a "hot potato". He hopes the Commission remembers that it is important to protect these 200-acres for the municipal water supply. He hopes and would push for maintaining the 200-foot buffer around Eel Lake and Tugman State Park.</p>
<p>Dennis Sargent Lakeside, OR</p>	<p>Dennis Sargent, for Lakeside Water District (LWD), which owns the water rights to Eel Lake. He said they are in support of this exchange and want to protect the water that they treat for City of Lakeside and surrounding areas. He said the 200-foot buffer is more than we expected and is more than twice what the Forest Practices Act would be. There is going to be logging and we want to protect water.</p>

	The treatment plant is in Tugman State Park on the southwest corner of the lake.
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10

Commissioner Anderson said LWD is being recommended as the holder of the conservation easement by the City of Lakeside. What resources does LWD have to enforce and monitor the parameters that would be put forth in the conservation easement? Sargent said the conservation easement around the lake would be enforced by LWD. We have manpower at the plant every day so we are onsite; so, anything that is done we would be aware of. He said if anything were to happen we do have attorneys through LWD. The conservation easement as written is iron-clad. It is more than just a line out there; it's a recorded line that we can enforce.

Bob Main Coquille, OR	Bob Main, Coos County Commissioner; provided written testimony, and spoke in opposition to this project. He said on November 6, 2012, this election day, 18,826 (70.35%) of Coos County citizens voted against any further expansion of the USFW Bandon Marsh project. Most citizens also include the project that is before us today. A study needs to be done to determine whether the project is viable. The draft management plan should be implemented before the trade so the public can comment. Main said the Bandon Marsh has created a major mosquito problem, and we had a West Nile outbreak. Eel lake is the last pristine watershed on the Oregon Coast; to destroy it would be devastating. It won't create any more fish or wildlife. It is not legal to flood lands, only to drain it.
Pat Burris Coquille, OR	Pat Burris, landowner, member of Beaver Slough Drainage District, is opposed to the land exchange. Many residents were not approached about this project, and did not approve it. ODFW is not prepared to do this project and does not know what will happen to Garden Valley.
Fred Messerle Coos Bay, OR	Fred Messerle, owner of Messerle and Sons, owns property in the Beaver Slough Drainage District that he chairs and he is the Coos County Commission chair. He said the objective is to coordinate the water so it benefits all the landowners. What we see here is the need to balance all those interests and come to a collaborative approach which builds partnerships and allows us to maintain infrastructure. Our tidegate structure is nearing the end of its life, and the ag sector cannot afford to replace it. It would cost \$1.5-to-\$2-million to replace. The interests of fish, wildlife, and agriculture are not mutually exclusive. We have the ability and tools to achieve everyone's objectives. 287 acres is a parcel within the drainage district. We're still gathering data,

	<p>have not even approached a preliminary design. Then we start the permitting process that allows input from landowners and all involved. He said we want local control of this project and to maintain our economic base and our tax base while preserving our natural resources.</p>
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1
2 Commissioner Webber asked Messerle to discuss the concern in Garden Valley about
3 flooding. Would the muted tidegates increase flood risk? Messerle said no, it depends
4 on design of the restoration, and it's still being designed. You can regulate the water
5 levels. Any work done on individual parcels will be part of the plan.
6

<p>Russ Hoeflich Portland, OR</p>	<p>Russ Hoeflich, Oregon Director of The Nature Conservancy (TNC), provided written testimony in support of the exchange. He said the proposed trade of 607-acres of second growth timber for 510 acres of wetlands will make an important contribution to improve fish and wildlife habitat on the Coquille. TNC has been pleased to provide real estate support and funding support and assistance to ODFW. If this land trade is approved, TNC is prepared to continue to help ODFW and others by leading efforts to restore the wetlands at this site. He said TNC has raised \$1 million via a federal wetland grant and hopes to secure match from the Oregon Watershed Enhancement Board (OWEB) later this spring. TNC requests that any monies that result from this land trade be reinvested into projects in the Coquille watershed.</p>
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<p>Arllys Fones Portland, OR</p>	<p>Arllys Fones, landowner, opposed the exchange, which landowners only heard about a few months ago. She does not see any benefit of this project. She said a lot of money will be spent, but it is questionable whether it will help fish. The flooding will hurt landowners. The plan is to flood China Camp Creek; we consider this to be a taking of the land. She is a second generation landowner in Garden Valley. It will be in danger of flooding. She would like to see three tidegates replaced and regulated. She said China Camp Creek has more water than in the past because the culvert under Hwy. 42 is not as low as in the past. She asked for more study on the benefits of this entire project. When land is not flooded, herds of elk are on the land but this project would remove them. Also the benefit of the trees is as much benefit to the area as removing it. Farmers make a lot of money from the cattle pasture. She said 70% of Coos County voters have voted against more wetlands. She asked the Commission to delay a decision until they have more information.</p>
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7

1 Chair Levy asked Steve Denney to answer questions by Ms. Fones concerning the three
2 tidegates replaced and regulated.

3
4 Denney said the most important point is that the tidegate and restoration part are still in
5 the early stages, and we're still in the fact-gathering mode. There's a hydrology study
6 that was just completed, a geo-tech study that looks at the soils, and core samples have
7 been taken and are in the lab. We just got the funding to complete the report. Those are
8 baseline information. He said we are really early in the phase; we haven't even started
9 the design and engineering phase. The other Commissioners heard examples of how
10 things have changed from the original anticipation. As we gather more information, we
11 will make those determinations on what water levels would be there and what mediation
12 we could do to prevent any flooding. He said he heard the Director comment, and
13 certainly from TNC and the drainage district that we are not going to impact the
14 neighbors. All the information will be used to design a project that doesn't affect them.

15
16 Denney said the tidegates are at end of life. If they fail the whole valley will be flooded
17 because it'll be under complete tidal influence twice a day at high tide. So they do need
18 to be replaced. The muted tidal regulators that we discussed provide much improved fish
19 passage over the current ones, and they are flexible in that you can adjust those and dial
20 in what water levels you want to do. They have that ability to help agricultural landowners
21 with their drainage. The tidal regulator presentation we had with the landowners there on
22 the hydro-study said those tidegates can drain three times the amount of water as the
23 ones that exist there. He said neighbors will have better water control, better drainage,
24 and less maintenance. It also allows us to do some partial tidal influence on the restored
25 wetlands that the Department is considering acquiring. And you can adjust it to a level
26 where it won't impact Garden Valley so it doesn't go across Hwy. 42. The hydro study is
27 done and as soon as ODFW gets a chance to look at that we can make a decision to
28 hold the water level at a level that does not impact those neighbors upstream. But we are
29 still early in the process and don't have that commitment in writing but it is everyone's
30 commitment that we will have that in writing. There will be a management plan for the
31 ODFW properties and the drainage district. In that will be some commitments about
32 water levels.

33
34 Chair Levy asked staff to address the issue of the culvert under Hwy. 42; drainage isn't
35 as low as in the past. Who is responsible for that? Denney said it would Oregon
36 Department of Transportation (ODOT); that is their culvert under the state highway. He
37 did not have an answer for that. He said they have heard that comment before. It would
38 not affect the downstream; perhaps it affects Garden Valley up above with their current
39 drainage but he is not aware of that. He said they did a physical survey of the private
40 lands in Garden Valley; he does not have the results of those here available. He doesn't
41 know if they surveyed the culvert and found any difference or not.

42
43 Chair Levy said if you purchase the land could that be something that you could look at
44 addressing so that they would not have that in addition to because they are already
45 having problems because that culvert is higher than it was in the past and is causing
46 them problems now? Cooper said the culvert is the responsibility of the road department
47 and ODFW would not have any jurisdiction on delivering them to do anything or doing

1 anything ourselves; it is outside our responsibility. We can certainly talk to ODOT about
2 opportunities to go after grants to replace it; it would not be cheap because it's under a
3 major highway and as a lot of fill over it.

4
5 Chair Levy asked for a response on the issue of wildlife and cattle being displaced.
6 Cooper said cattle and wildlife do interact and the benefits that cattle produce for wildlife
7 is very good. The land we are talking about acquiring potentially is below Hwy. 42. He
8 said while there may be some large ungulates down there the comment was more
9 geared toward the Garden Valley strip on the other side of Hwy. 42. It is not something
10 we would look at changing because we would not want to back the water up beyond
11 Hwy. 42. Once we do it has adverse impacts on the folks in Garden Valley.

12
13 Chair Levy said it's not going to affect cattle grazing lands, or the wildlife going to and
14 from those areas? Cooper said no, it wouldn't affect anything above Hwy. 42 because
15 we would not back water up above Hwy. 42. All the restoration and activities would occur
16 on the south side of Hwy. 42 on the property we are proposing to acquire.

17
18 Commissioner Webber said the tidegates are regulating the tidal influence on this
19 ground. He asked if all of it is below river level or just below high tide. Denney said the
20 tidegates operate based on water pressure. At high tide it forces the gates closed; at low
21 tide they open to promote drainage of the properties above the river level.

22
23 Commissioner Webber asked, at high tide in the preliminary planning, how much of the
24 287- acres will be effected by flooding or influenced by the tide. Denney said that has
25 not been determined. The hydrology study is complete but we don't have the final report
26 yet. It shows different inundation levels at different tidal levels that allow the managers
27 (drainage districts, ODFW, and landowners) to pick a level that meets their objectives.
28 He said it is still early and those decisions have not been made. The most important part
29 here is that they are going to pick a tidal level that doesn't affect the neighbors and it
30 could be a range of different tidal levels. It could also be a range of different openings at
31 different times of the year.

32
33 Commissioner Webber said the tidegates would have no bearing on the level of water
34 now when it is going over the top of the dikes to begin with. At Winter Lake will these
35 tidegates have any effect on how high that gets? Or is that based on the flow of the
36 Coquille River? Denney said right now when the Coquille reaches flood stage it overtops
37 the existing river bank in two places: up by the mill in Coquille and up Beaver Creek. The
38 tidegates don't make a difference in the wintertime. Those lands flood by overtopping.

39
40 Commissioner Akenson asked is the drainage district responsible for managing flows
41 with the tidegates. Or who decides how much water comes in from the high tide?
42 Denney said the drainage district manages the water levels at the tidegates and the
43 infrastructure.

44
45 Commissioner Akenson said if you want more water to flood this property are you able to
46 use the existing ditches to get water to the property, or will they need some higher berms
47 or enhancements to protect other properties? Denney said again those details have not

1 been worked out. A plug would be put in at the existing China Creek and that water
2 diverted out into old channels on the Bandon Biota property, taken back through the gun
3 club and into its own set of muted tidal regulators that allow you to control that water
4 independently. One section of dike will have to be built to protect the Waterman property
5 from that area, but that's all in the tidegate replacement part. He said it is really a
6 drainage district and their infrastructure we would look at. The proposal is to build one
7 section of dike that would segment out that piece of property from the neighboring
8 agricultural properties.

9
10 Commissioner Akenson said most of the new water for flooding will be coming from
11 upstream or from the tidewater? Denney said it will be from the tide. There is water
12 coming down from China Camp Creek; there is not much flow in the summertime. More
13 in the wintertime but a lot of that will be under some tidal influence back and forth, which
14 you heard the concern from the Garden Valley folks. We have not chosen the water level
15 yet, we are waiting for the hydrology study. The intent is to hold it to a level to maximize
16 wildlife benefits while not affecting the neighbors.

17
18 Commissioner Akenson asked what the public access to this property is. Denney said
19 there is access to both pieces of property. The best access is to the Winter Lake
20 property that has two easements that allow access. The Beaver Slough access will be
21 more difficult because it is bounded by two state highways and there is not great public
22 access. We have talked to ODOT about access possibilities.

23
24 Commissioner Anderson referred to the public comments and said most opponents felt
25 we were putting the cart before the horse: the lack of a draft management plan;
26 premonitoring; and engineering and design component. From the detailed chronology
27 she can see that this project has been in the works almost five years, but a lot of the
28 affected landowners were just consulted this fall. What is the time sensitivity to approving
29 this deal? Is there time to complete draft management plans, engineering design, and do
30 some premonitoring or are there some factors in place that would necessitate doing this
31 in advance of that?

32
33 Denney said the Commission has heard that the landowners don't feel that they have
34 been talked to. If you look at the chronology on February 16, 2011, we did have a
35 meeting with the Garden Valley residents and other landowners. He had a number of
36 different meetings both when he was with ODFW and now with TNC. The drainage
37 district has held a number of different landowner meetings over that two-year period.
38 There has been a stakeholder meeting with all of the permitting agencies; and there
39 have been at least two informational meetings on progress of the hydro study. He did not
40 agree entirely that they just heard about this proposal. It's a three-legged stool. First is
41 the land trade portion where ODFW obtains ownership. TNC has secured a grant from
42 USFWS through National Coastal Wetlands Conservation Act that allows us to complete
43 some of the studies. For instance the hydro study is pretty well complete and the
44 geotech study is underway. He said there is no doubt in ODFW's mind that this has
45 great benefits to the public for access and benefits to fish and wildlife.

46

1 Cooper said of the things we've done relative to the restoration part and beyond is to
2 look at developing a management plan like Summer Lake and different wildlife areas.
3 We've identified a person that is currently in the drafting stage of that. But how much
4 time and energy do you put into a management plan if you don't have the land to
5 manage? For the restoration and tidegate aspect, how far do you get down the road
6 when you do not even have any land? He said currently we do have a willing seller and
7 buyer, but how long will that maintain? Can we postpone it for a year? What would Mike
8 Kaiser say?
9

10 Commissioner Anderson said it appears the Department feels fairly certain that they'll be
11 able to control the issues of the gravest concern to the landowners, mainly flooding. She
12 said Mr. Messerle indicated with enough money and engineering that could be done. It
13 appears as though the partnerships are in place. She said there is also a timber sale that
14 could help fund some of this work.
15

16 Commissioner Finley asked Deputy Director Melcher for clarification on government
17 funding and authorizations to proceed to spend on planning and engineering.
18

19 Deputy Director Melcher said it would be very uncharacteristic for us to secure funds to
20 do a management plan, to secure limitation to do a management plan on a property that
21 we did not own. Regarding time sensitivity, we have a willing seller and we know the
22 wheels of government turn very slowly, but were at a point where we've got all those
23 gears lined up. Still, we don't know how long we'll have a willing seller if we were to delay
24 or wait.
25

26 Commissioner Finley said we have a private property owner with two parcels who wants
27 to exchange land with the state, and TNC has a wetlands grant from USFWS. Why
28 couldn't this person work with you and continue to own the property and restore the
29 wetlands or relood the wetlands? He said this person seeks to restore fish and wildlife
30 habitat. Even if he did this on his own property he could not commit a common law
31 nuisance and flood his neighbors. What has he said about this? Cooper said his
32 motives you would have to ask the man to determine that. What we have discussed in
33 this past is his desire to do good things for fish and wildlife. Mr. Seeley's motivation is
34 strictly better fish and wildlife habitat. If this did not go through and the Commission
35 choose to not make this happen would it happen anyway? He doesn't know the answer.
36

37 Denney said at least the restoration dollars that we got would not be able to be
38 transferred and used by a private landowner. Those funds came to TNC so you'd have
39 to start over with a granting process through OWEB or other granting entity.
40

41 Commissioner Finley asked if the funds have actually been transferred and put in prior
42 accounts. Regarding the timing comment and with the fiscal cliff there is going to be a lot
43 of money not spent and they could impound it. If it has not been obligated and actually
44 transferred you lose it. Denney said yes, those monies have been approved and
45 allocated to OWEB to be allocated TNC.
46

1 Commissioner Webber said he has been on the property; it looks like a viable project. He
2 said we need to step forward and get the property. When we are developing a plan,
3 anybody including the local landowners who feel they will be affected will have every
4 opportunity to participate in that development. We can make sure nobody is harmed, and
5 that fish and wildlife are benefited.

6
7 *Action: Commissioner Webber moved to approve the exchange of described*
8 *ODFW-owned lands at Eel Lake for described lands in the Coquille River Basin*
9 *and direct staff to proceed to escrow closing upon completion of the due diligence*
10 *processes required under Oregon Administrative Rules for land exchanges.*
11 *Commissioner Holly seconded the motion, and the motion carried unanimously by*
12 *a vote of five.*

14 **Exhibit E: Fish Restoration and Enhancement Program**

15 Josie Thompson, Restoration and Enhancement (R&E) Program Coordinator, presented
16 15 R&E projects and funding recommendations. The R&E Board recommends funding
17 for eight restoration projects totaling \$296,000; and seven enhancement projects totaling
18 \$290,000. If approved, there will be \$357,000 remaining in the budget for the last funding
19 cycle. In regard to the Public-at-Large board member appointments, Thompson
20 presented a list of 12 applicants (Attachment A), and gave a summary of the selection
21 process. R&E staff recommends appointing Greg Silbernagel, Pendleton. His ability to
22 work with a variety of people makes him an excellent candidate.

23
24 **Public Testimony:** There was no public testimony.

25
26 *Action: Commissioner Webber moved to approve the recommendations of the*
27 *Fish Restoration and Enhancement Board. Commissioner Anderson seconded*
28 *the motion, and the motion carried unanimously by a vote of five.*

29
30 *Action: Commissioner Finley moved to appoint Greg Silbernagel to serve a four-*
31 *year term as Public-at-Large Representative on the Restoration and*
32 *Enhancement Board. Commissioner Akenson seconded the motion, and the*
33 *motion carried unanimously by a vote of five.*

35 **Exhibit F: Seasonal Closure Modifications to Treaty Indian Subsistence Fishing** 36 **Sanctuary at Mouth of Fifteenmile Creek on Columbia River**

37 Steve Williams, Fish Division Assistant Administrator, gave a brief slide presentation,
38 *Tribal Subsistence Fishing in the Fifteen Mile Creek Sanctuary.* He gave a background of
39 the creek. In June 2012, a temporary rule was approved modifying the sanctuary to allow
40 harvest June 16 – November 15. The new rule will provide harvest opportunity outside
41 the run timing of returning steelhead to Fifteen Mile Creek. Williams recommended that
42 the Commission adopt the Fifteen Mile Creek subsistence fishing sanctuary
43 modifications as proposed by staff in Attachment 3 – Draft Oregon Administrative Rules.

44
45 **Public Testimony:**

Jim Myron N/A	Jim Myron, Native Fish Society (NFS), distributed written testimony from Bill Bakke submitted 12-05-12. NFS opposes
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	<p>the opening of the sanctuary to angling. He said there has been no public involvement; this is the first public involvement. The discussions between ODFW and Tribes have either been informal or under the cover of the U.S. versus Oregon process. He asked how many of the landowners in the Fifteen Mile Creek basin that have done habitat projects over 20-years are aware of what is being proposed and whether they would be supportive. Bill Bakke received two emails from landowners asking what was happening. Myron said these fish are on the brink of extinction and are lower than a 500 fish limit for a viable population. NFS thinks it is premature to consider a fishery on them; we don't know where they are at and when they are there. The sanctuary was put in place to protect and restore them and that is what the efforts by the basin landowners were for. This issue needs more discussion with the interested parties before you make any final decision.</p>
<p>Tom Wolf Hillsboro, OR</p>	<p>Tom Wolf, Oregon Chapter Trout Unlimited (TU), said it is important to provide areas that those fish can stay in; that they will not be harassed by commercial or recreational fishermen. He said TU opposes this and agrees with NFS. The Fifteen Mile Creek sanctuary is very important for a very unique species of salmon. He urged the Commission to not approve this measure. We owe it to what the ranchers and landowners in this basin have been doing for the last 20 years to make restoration projects and protect these fish.</p>

1
2 Commissioner Webber said we are allowing subsistence fishing June through
3 November. Is there a lot of steelhead in the river during this time or are they mostly in
4 the creek? Myron said the fish start to come over Bonneville Dam in June, about the time
5 the sanctuary would be open to fishing. Whether they go to within 600-feet of the mouth
6 of Fifteen Mile Creek is the question and we don't have an answer. He had asked Steve
7 Williams how many fish the Tribes would catch during that time. He had no idea and no
8 idea how many of these might be unmarked wild fish. There is a lot of uncertainty.
9
10 Williams said the area has been closed so it is unknown how many fish might be
11 harvested. It's very likely that those Fifteen Mile fish are not present in the area at the
12 time of the potential opener, largely because throughout the summer and well into the fall
13 the flows out of Fifteen Mile Creek are extremely low; e.g., less than 1 CFS and have
14 temperatures near 80-degrees. He said there would be no attraction flow for those fish to
15 even appear there. Their timing is more driven largely by temperature than anything else.
16 It's unlikely there are a lot of fish there at all but the Tribes feel strongly that they want
17 some opportunity to harvest fish there. With this rule staff is trying to put in place
18 something that has low risk and meets some consideration for Tribal issues.
19

1 Commissioner Akenson referred to The Dalles Dam map of and asked where the original
2 sanctuary is. Williams pointed to the map and said this represents the existing sanctuary,
3 600-feet on either side of Fifteen Mile Creek as described in Rule. It has not changed.
4

5 Commissioner Akenson said do all fish have to go through this area to get to the fish
6 ladder? Williams said there are several fish ladder entrances on this side of the dam, and
7 along the Washington shore. If Fifteen Mile fish are present, they'd be on the Oregon
8 side and moving into this area. It's unlikely they are there at the time of the openings
9 described in the rule. Commissioner Akenson asked, but there would be other steelhead
10 there. Williams said yes, other fish are moving in June, July, and August up the river.
11 Commissioner Akenson said that is a travel corridor through some of the fish ladders?
12 Williams said yes.
13

14 Commissioner Webber said this only allows subsistence fishing? Williams said correct.
15 Commissioner Webber said is that dip netting off the shore? How do they access the
16 fish? Williams said the traditional method is off a platform using hoop nets.
17 Commissioner Webber asked if the creek is closed. Williams said yes. Commissioner
18 Webber said in the period that we allow it the deadline would run from that point across
19 the end of the creek? Williams said yes, across in the mainstem.
20

21 Commissioner Finley referred to two arrows on the PowerPoint map designating Fifteen
22 Mile Creek and said that is the area that will continue to be closed or will that section be
23 open seasonally by this? Williams said that area would be open seasonally with the
24 described Fifteen Mile Creek sanctuary so there would be a season opener within that
25 area. Commissioner Finley said it would not go up the creek; it's just a line across the
26 mouth. Williams said that is correct.
27

28 Commissioner Finley said what if the Commission was to just open this as you
29 recommend. He was troubled and this does not feel right in a sanctuary. If you had
30 taken because you are below the 500 number would you be able to know what the take
31 is for subsistence? Williams said subsistence harvest numbers that staff receives is
32 directly from the Tribes. They have programs that identify and numerate the harvest of
33 fish by Tribal members. They have biological sampling programs that might pick up a Pit
34 tag if they happen to sample at the time. It is unlikely with a low level of harvest in this
35 area that they would encounter that. He anticipates a low number of fish being caught
36 here.
37

38 Legal Counsel Sanders said *U.S. versus Oregon* governs much of the harvest with the
39 Tribes in this area. He said the state in order to regulate Tribal fishing must demonstrate
40 a conservation necessity. Oregon is one of the leaders in developing case law on this
41 subject and we always lost, because the Commission continually would set seasons
42 which were neutral on their face but which had the effect of limiting the tribes' ability to
43 access their share of the fish. He said the Tribes share the fish and their ESA-impacts
44 are set in *U.S. versus Oregon*, so nothing the Commission does here will change the
45 Tribes' ability to overshoot their ESA impacts. What we had to be able to demonstrate
46 was that conservation necessity; meaning our restrictions on the Tribal harvest were the
47 least necessary to preserve the fish because we had much better evidence about when

1 the fish were there and not so evidence to show in the part where we are leaving it open
2 . He said he was concerned that we would not be able to meet our burden of proof to
3 show that we were keeping it closed year-round, strictly for conservation purposes.
4

5 Commissioner Anderson was also uneasy with this rule. She referred to staff's analysis
6 and said there were several citations that were issued last June to Tribal fishers for
7 fishing in that sanctuary. She said the enforcement issues are very difficult. She is
8 concerned that if the Commission does not adopt this rule, the hostilities could continue if
9 they wanted to try to execute a fishery in that area against Oregon rule.
10

11 Williams said there is no question there is a difference of opinion about what is needed
12 either for conservation or whether the states have the authority to regulate the Tribes in
13 this area or others. We discuss this when working through *U.S. versus Oregon*
14 agreement and try to avoid the situations Commissioner Anderson just described. He
15 said the issue of sanctuaries at the mouth of streams up and down the Columbia is being
16 discussed in the Regulatory Coordination Committee, which is a group of state and
17 Tribal technical folks trying to reach consistency on the rules. He said each Tribe sets
18 their own rules with regard to how they fish in the Columbia River.
19

20 Commissioner Webber said he is bothered by this. He will support this but it is not
21 because he likes it. Chair Levy went on record to say the same thing.
22

23 *Action: Commissioner Akenson moved to adopt the Fifteen Mile Creek*
24 *subsistence fishing sanctuary closures as proposed by staff in Attachment 3.*
25 *Commissioner Anderson seconded the motion. Commissioners Anderson,*
26 *Akenson, Webber, and Chair Levy voted aye. Commissioner Finley voted nay.*
27 *The motion passed by a vote of four to one.*
28

29 **Exhibit G: 2013 Commercial Groundfish, Recreational Groundfish, and Fish Dealer** 30 **Records and Reports Regulations**

31 Troy Buell, State Fishery Management Program Leader, said the Commission adopted
32 the 2013 Regulations for groundfish fisheries and reviewed the 2011 annual commercial
33 Nearshore logbook report. During a slide presentation he discussed the Groundfish
34 Regulation process for 2013-2014 Fisheries.
35

- 36 1. 2011 Commercial Nearshore Logbook Report. Compliance rates have increased
37 considerably.
38
- 39 2. 2013 Commercial and Sport Groundfish Regulations. Buell talked about the federal
40 process and state regulations. Recommends a small reduction in the cabezon cap of
41 half-metric ton due to reduction in federal guideline. He discussed the 2013 annual
42 statewide caps (metric tons) and the 2013 Bi-monthly vessel limits (pounds) for the
43 Commercial Nearshore Fishery, and 2013 Annual Statewide Caps (metric tons) and
44 Measurement Measures for the Sport Fishery.
45
- 46 3. He discussed other Commercial Groundfish issues:
47
 - Conversion factors for groundfish dressed at sea; federal concurrency.

- 1 • Commercial regulation housekeeping revisions to correct errors.
2 • All fish dealer records be kept in English language and facilitates administrative
3 records checks by OSP.
4

5 Buell presented staff recommendations in Attachment 3 – Draft Oregon Administrative
6 Rules:

- 7 • Adopt federal regulation by reference.
8 • Reduce Cabezon caps in sport and commercial fishery.
9 • Increase bi-monthly limits across the board for every period for black and blue
10 rockfish and greening in commercial fishery.
11 • Reduce Cabezon season length in sport fishery.
12 • Adopt all federal groundfish conversion factors into state rule.
13 • Require fish dealer records to be kept in English language.
14 • Adopt housekeeping revisions to commercial regulations.
15

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

18 ***Commissioner Anderson declared a potential conflict of interest as she does***
19 ***purchase fish that would be affected by any rulemaking today.***
20

21 *Action: Commissioner Finley moved to adopt the recommended 2013 commercial*
22 *groundfish, sport groundfish, and conversion factor regulations as proposed by*
23 *staff in Attachment 3. I also recommend adoption of the housekeeping changes in*
24 *Divisions 004, 005, and 006 as shown in Attachment 3. Commissioner Webber*
25 *seconded the motion, and the motion carried unanimously by a vote of five.*
26

27 **ADJOURN**

28 Chair Levy adjourned the public meeting at 5:21p.m.
29