



Oregon Fish and Wildlife Commission Minutes

Meeting: May 10, 2013 – 8:00 a.m.
Oregon Department of Fish and Wildlife
Commission Room
3406 Cherry Avenue
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

Bobby Levy, Chair	Roy Elicker, Director
Michael Finley, Vice-Chair	Curt Melcher, Deputy Director
Bob Webber, Commissioner	Debbie Colbert, Deputy Director
Holly Akenson, Commissioner	Steve Sanders, Assistant Attorney General
Gregory J. Wolley, Commissioner	Teri Kucera, Executive Assistant
Laura Anderson, Commissioner	

8 **MEETING**

9 On Friday, May 10, 2013 at 8:00 a.m., Chair Bobby Levy called the Oregon Fish and
10 Wildlife Commission (the Commission) meeting to order at 8:00 a.m.
11

12 **DIRECTOR'S REPORT**

13 **Field Reports**

14 Northeast Region

15 Bruce Eddy, Region Manager, invited the Commission to the Eighth Annual Ladd Marsh
16 Bird Festival scheduled May 17-19. The event is an opportunity to show off the Ladd
17 Marsh Wildlife Area and a variety of events. Eddy said Oregon Department of Fish and
18 Wildlife (ODFW) wildlife biologists were finishing big game surveys to get ready for tag
19 setting. Overall the population wintered well under the mild winter conditions. There is
20 no indication that wolf predation is having any noticeable impact on the herds that reside
21 in the vicinity of a wolf pack. Staff believes cougar predation is a bigger issue right now.
22
23

24 High Desert Region

25 Chip Dale, Region Manager, reported on the main drought affects in his region:

- 26 • Klamath Basin. May 1 the snowpack water equivalent was 29% of average; May
27 6 it was down to 19%. The Oregon Water Resources Department (WRD) released
28 the final order determination, a culmination of the adjudication of the water rights
29 for the Klamath Basin.
- 30 • Lake County. Water availability and snow pack below average at 39%. Some
31 reservoirs will not be available for fishing; staff may shift stocking to other water
32 bodies. Staff will monitor fish that are listed as endangered.
- 33 • Malheur Watershed is the worst at 18% of average. The Warm Springs Reservoir
34 probably will not fill. Dale said often it dries up in the season and ODFW goes to
35 liberal fishing. Staff may ask the Commission for emergency rules for that.

- 1 • Owyhee River Basin has the lowest snowpack at seven percent.
- 2 • Upper Deschutes Basin is at 55% of average snowpack; staff anticipates good
- 3 fishing. Staff anticipates that Ochoco Creek, Prineville Reservoir, and Crooked
- 4 River will get low late in the summer. The drought affected summer steelhead
- 5 and smolts in the Lower Deschutes Basin; winter numbers have been low.
- 6 • Hood River is doing fairly well in snowpack. This year's catch of steelhead smolts
- 7 is 85% higher than last year.
- 8 • Cascade Lakes opened April 27 and the fishing was very good.

9

10 Southwest Region

11 Larry Cooper, Region Manager, reported that last month a tragic boating accident took
12 the life of Kristle Volin, Program Manager for the Coquille Watershed Association, while
13 she was surveying areas on the South Fork of the Coquille River. He said Kristle had
14 worked for ODFW in a variety of positions. She was liked by all and will be greatly
15 missed. A memorial fund to help the family has been set up at Coos Bay Chapel. Cooper
16 reported on the recent travels of OR-7, the GPS collared wolf, which came back to
17 Oregon in mid-March from California. Lastly, staff found a Pacific fisher on a Brookings
18 golf course that they were able to trap and release back into the wild.

19

20 Acting Deputy Director Nick Myatt said he put together a Watercraft Safety Committee
21 (WSC) to look at the use of watercraft to identify issues or areas to improve employee
22 safety. WSC met May 8 and presented recommendations to the Executive Leadership
23 Team on May 9. WSC will look at ODFW watercraft safety policies and develop
24 mandatory safety trainings for agency staff using watercraft: 1) motorboat operator safety
25 training; and 2) swift water river training. Staff will work with Oregon State Police (OSP),
26 Oregon Marine Board, and other state agencies. A subcommittee will develop the
27 training program modeled after ODFW's In the Air Safety Manual.

28

29 Northwest Region

30 Chris Wheaton, Region Manager, reported that ODFW is assisting the U.S. Fish and
31 Wildlife Service (USFWS) to relocate Columbian White-tailed deer in the state of
32 Washington. One deer swam across the Columbia River to Sauvie Island Wildlife Area
33 (SIWA) but succumbed after crossing. Two other deer residing on SIWA are being
34 monitored by USFWS. He reported on winter steelheads returns. The Willamette Wildlife
35 Mitigation Program's Technical Review Team reviewed 16 applications; the proposals
36 totaled about \$16 million that are competing for \$8 million in funding. The Willamette
37 Advisory Group's recommendations will go to Director Roy Elicker who will then make a
38 final recommendation to the Bonneville Power Administration for funding.

39

40 Information & Education

41 Roger Fuhrman, Administrator, discussed new partnerships. Dick's Sporting Goods staff
42 will start teaching basic fishing skills to Boy Scouts in the Portland area. Dick's will create
43 in-store displays highlighting fishing gear suitable for beginners. He said the new "*Photo*
44 *Sharing*" on the website has been very popular. Staff received over 70 high resolution
45 photos from the public of their hunting, fishing, and wildlife viewing experiences. See
46 http://www.dfw.state.or.us/images/photo_submissions/index.asp. Fuhrman reported
47 on promotion partnerships: Oregon State University - ODFW baseball Catch of the

1 Game announcements over the Beaver radio network, and a hunter/angler promotion
2 night during a Portland Trail Blazers game and a Portland Timbers game.

3 4 Ocean Salmon and Columbia River Program

5 Steve Williams, Fish Division Deputy Administrator, said in December staff presented the
6 pre-season run forecast for Columbia River upriver spring Chinook at 141,400 fish. Total
7 run to the Columbia including the Willamette and other lower river stocks is 209,000 fish.
8 Staff managed with a 30% buffer. From January to early May the management
9 guideline was a run-size equal to 70% of the forecast or 99,000 fish. The 7,325 fish
10 guideline for upriver spring Chinook for non-Tribal was over 5,950 fish for recreational
11 and 1,370 fish to commercial.

- 12 • Recreational fishery January 1 - April 5 season was extended to April 12.
13 Through April 12, 5,100 fish were harvested.
- 14 • Above Bonneville March 16 - May 5 the harvest guideline of 660 fish was caught.
- 15 • One nine-hour Mainstem Columbia commercial fishery below Bonneville set on
16 April 9 with a landing limit of nine adult Chinook per vessel. Deliveries were under
17 130. Total catch was 1,000 fish; about 690 were upriver spring Chinook (56%).
- 18 • Select Area Commercial Fisheries through May 8 have caught approximately
19 3,700 spring Chinook; slightly ahead of last year's catch.
- 20 • Through May 9 over 60,000 upriver spring Chinook passed over Bonneville Dam
21 with 37 days left in the season. On Monday the *US v. Oregon* Technical Advisory
22 Committee (TAC) will meet. He anticipates TAC will increase its run-size forecast.
23 Staff will work through the Columbia River Compact to harvest the additional fish.
- 24 • Willamette River pre-season run forecast is 59,000 fish. Over 6,000 fish were
25 harvested through May 5. The count at Willamette Falls was 11,000 fish through
26 May 6. With the very warm and low water conditions in the Willamette the spring
27 Chinook move early in high numbers upriver to get away from the warm water. He
28 said the lack of catch is probably not indicative entirely of what the run-size is.

29 30 Oregon State Police, Fish and Wildlife Division

31 Captain Jeff Samuels reported on four separate cases.

- 32 1. After 24-hour surveillance on SIWA, two Troopers removed 10 live sturgeon and
33 walleye from concealed gill nets in the area of Sturgeon Lake. The subjects were
34 arrested and charged with numerous charges and their boat was seized.
- 35 2. Two Troopers stopped a vehicle for a traffic violation and found a large sturgeon
36 cut up and hidden in a backpack. The occupants were issued criminal citations for
37 Unlawful Taking of Sturgeon-Closed Season and Mutilation of a Game Fish.
- 38 3. In the fall of 2012, Troopers out of The Dalles arrested an individual suspected of
39 selling feral swine hunts on private property.
- 40 4. In the Waldo Lake area dogs were caught in a trap. An investigation revealed that
41 the traps were set closer than 300-feet. Troopers put forward the case as a crime
42 with a recommendation to the District Attorney for a reduction to a violation. The
43 defendant was found guilty of putting his trap too close to the trailhead. The judge
44 imposed a fine of \$435. The Trooper noted a change in the bail amounts and the
45 offense was a Class D violation. The defendant was charged with a \$110 bail.

46 47 Expenditure and Budget Report

1 Debbie Colbert, Deputy Director for Administration, said as of March 31, Department
2 wide, expenditures are tracking as expected. Revenues are lagging this time of year due
3 to receivables for work billed under grants and contracts. She said the Controlled Hunt
4 Application deadline is May 15; we are tracking between 5-8% below last year. Every
5 year it falls on a different day of the week and she anticipates a peak over the weekend.

6
7 Deputy Director Colbert said ODFW's presentation through the first phase of the Ways
8 and Means Natural Resources Subcommittee process was well received. The public's
9 testimony on the Department was extremely positive. On May 6, staff testified during
10 Phase 2 of the process on policy option packages, General Fund/Lottery Fund
11 reductions, and position vacancies. The Subcommittee will schedule a work session on
12 the budget sometime this month. The state's Revenue Forecast is on May 15, 2013.

13
14 Deputy Director Colbert reported that the new Salem Headquarters building project is
15 going smoothly and is within budget. She said we will move either August 15 or
16 September 13. The contractor is moving about one month early. We have asked the
17 contractor to commit on June 1 so we can finalize our timeline for the move.

18 19 **Adopt Temporary Rules**

20 Acting Deputy Director Nick Myatt asked the Commission to adopt the 10 temporary
21 rules starting on page 1 of the tan-colored agenda with OAR 635-060-0040 and ending
22 on page 3 with OAR 635-023-0134.

23 24 **1. 635-060-0040**

25 **Authorize Spring Bear Tags for Active Members of the Armed Forces**

26 Adopted March 11, 2013: effective March 11, 2013 through September 2, 2013.

27 The adoption of these rules would provide a mechanism for Oregon's active duty
28 members of the Armed Forces stationed out of state to obtain a controlled or limited
29 spring bear hunt tag if they return to Oregon on leave during the season so they can hunt
30 with their family and friends. The process used to obtain a bear tag would be the same
31 process already established for issuing deer and elk tags for controlled hunts. To qualify
32 for these tags individuals must be from Oregon, currently stationed out of state, and
33 maintain Oregon residency.

34 35 **2. 635-075-0005**

36 **Authorize a Landowner's Designee to Sign a Landowner Preference Tag** 37 **Distribution Form**

38 Adopted March 11, 2013: effective March 11, 2013 through September 2, 2013.

39 The current rule requires landowners to complete Landowner Preference Tag
40 Distribution Forms and submit forms by specified dates. Many landowners are not active
41 participants in organizing hunting activities on their property. In many cases there is a
42 family member, business associate, employee, or friend responsible for completing the
43 tag distribution forms which then must be returned to obtain the landowners signature.
44 Because a large number of tag distribution forms are completed by individuals other than
45 the landowner this amendment is necessary to authorize individuals designated by the
46 landowner to sign tag distribution forms.

1
2
3 **3. 635-042-0145**

4 **Youngs Bay Salmon Season Fishing Periods Increased on March 13 and 14, 2013**

5 Adopted March 12, 2013: effective March 13, 2013 through July 31, 2013.

6 This amended rule increases the length of previously authorized fishing periods in the
7 ongoing Chinook salmon and white sturgeon fishery in the Youngs Bay Select Area of
8 the Columbia River. Modifications are consistent with the action taken March 12, 2013
9 by the State of Oregon.

10
11 **4. 635-014-0090, 635-016-0090, 635-017-0095, 635-023-0095 and 635-039-0090**
12 **White Sturgeon Annual Bag Limit in Recreational Fisheries Increased**

13 Adopted March 18, 2013: effective April 1, 2013 through September 27, 2013.

14 These amended rules increase the annual bag limit for white sturgeon in recreational
15 fisheries from one to two fish effective April 1, 2013.

16
17 **5. 635-042-0160 and 635-042-0180**

18 **Blind Slough and Deep River Select Area Commercial Fisheries Modified**

19 Adopted March 21, 2013: effective March 21, 2013 through July 31, 2013.

20 These amended rules add two new fishing periods to the ongoing Chinook salmon and
21 white sturgeon fisheries in the Blind Slough and Deep River select areas of the Columbia
22 River. Modifications are consistent with the action taken March 21, 2013 by the
23 Columbia River Compact agencies of the states of Oregon and Washington.

24
25 **6. 635-039-0080**

26 **Adopt Federal Regulations by Reference for 2013 Recreational Pacific Halibut**
27 **Fisheries**

28 Adopted April 1, 2013: effective May 1, 2013 through May 31, 2013.

29 These amended rules incorporate federal regulations by reference to establish
30 concurrent seasons and regulations for 2013 recreational Pacific halibut fisheries,
31 scheduled to open in early May.

32
33 **7. 635-023-0125**

34 **Columbia River Recreational Spring Chinook Season Extended**

35 Adopted April 3, 2013: effective April 5, 2013 through July 1, 2013.

36 This amended rule extends the 2013 Columbia River recreational spring Chinook
37 season, previously set to close on April 6 through Friday April 12, except closed on
38 Tuesday April 9, 2013. All other regulations previously set remain the same. Revisions
39 are consistent with action taken April 3, 2013 by Columbia River Compact agencies of
40 the states of Oregon and Washington.

41
42 **8. 635-042-0022**

43 **2013 Commercial Spring Chinook Fishery in the Mainstem Columbia River**

44 Adopted April 8, 2013: effective April 9, 2013 through April 30, 2013.

45 This amended rule allows a non-Indian commercial spring Chinook fishery in the
46 mainstem Columbia River to commence on April 9, 2013 from the mouth of the Columbia
47 River upstream to Beacon Rock (Zones 1 through 5). The authorized tangle net fishing

1 period is from 7:00 a.m. through 4:00 p.m. (9 hours). Modifications are consistent with
2 joint state action taken April 8, 2013 by the Columbia River Compact agencies of the
3 states of Oregon and Washington.
4

5 **9. 635-003-0003 and 635-013-0003**

6 **Salmon Seasons for Commercial and Sport Fisheries in the Pacific Ocean**

7 Adopted April 25, 2013: effective May 1, 2013 through May 15, 2013.

8 The amended rules incorporate, by reference, the annual ocean commercial (OAR 635-
9 003-0003) troll salmon and annual ocean sport (OAR 635-013-00003) salmon
10 specifications and management measures as adopted by the Pacific Fishery
11 Management Council at its annual Ocean Salmon Management Measures and Impacts
12 meeting, as finalized in April 2013. Housekeeping and technical corrections to the
13 regulations were made to ensure rule consistency.
14

15 **10. 635-023-0134**

16 **Open Spring Chinook Sport Fishery on the Snake River below Hells Canyon Dam**

17 Adopted April 25, 2013: effective May 4, 2013 through September 30, 2013.

18 This amended rule extends the 2013 Columbia River recreational spring Chinook
19 season, previously set to close on April 6 through Friday April 12, except closed on
20 Tuesday April 9, 2013. All other regulations previously set remain the same. Revisions
21 are consistent with action taken April 3, 2013 by Columbia River Compact agencies of
22 the states of Oregon and Washington.
23

24 *Action: Commissioner Webber moved to adopt the administrative temporary rules*
25 *1 through 10 as set out on the agenda. Vice-Chair Finley seconded the motion,*
26 *and the motion carried unanimously by a vote of six.*
27

28 **PUBLIC FORUM**

29 *Note: This part of the agenda is for comments on topics not scheduled elsewhere on the*
30 *agenda. The Commission is unable to take action on items brought to their attention in*
31 *this forum.*
32

<p>Bruce Hansen Sauvie Island, Oregon</p>	<p>Bruce Hansen distributed written testimony and said he has fished commercial and sport for 60 years. He discussed the Willamette system and said this year he talked to over 200 fishermen, guides, and Sauvie Island anglers.</p> <ol style="list-style-type: none">1. They are mad because there was no public hearing on the barbless hook regulation.2. They fish for spring Chinook to eat with their families and are not catch and release trophy fly-fishermen.3. Commissioner Anderson had stated that her father used barbless hooks while power trolling in the ocean and it worked well. He said they are fine for trolling but do not work practically when sport angling.4. Some sport anglers drag the fish with the motor to get close to net it; if it is a native fish the mortality rates are not good.
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	<ol style="list-style-type: none"> 5. Statistics indicate the hooking mortality with barbed hooks is one percent or less. He said the sea lions are doing more damage than that. 6. Hansen doubts the mortality rates are very good for anglers using the third hook as a trailing hook that will hook down in the gills, the eye or outside the head. 7. It takes on average 12 trips to land a fish. In this economy who can afford to pay \$39.90 a pound? <p>Hansen suggested repealing the barbless hook regulation and implementing a Chinook angler's barbed hook permit. He didn't think anyone would object to obtaining a license to use barbed hooks responsible especially when the catch is a very high quality food fish that Oregonians depend on.</p>
<p>Joe Rohleder Waldport, Oregon</p>	<p>Joe Rohleder distributed handout <i>Cornerstone of U.S. Conservation, The Pittman-Robertson Act Celebrates 75 Years</i> by John McDonald. He is familiar with the money sources that enable conservation with fish and wildlife in Oregon. He said people say they should not use taxpayer money for that. The Pittman-Robertson Act (PRA) became law on July 1, 1938. In the 1930s, Carl Shoemaker was the publisher/editor of the Roseburg newspaper who became chief of the Oregon Fish and Game Commission and later did investigative work for a Senate Committee. Rohleder has asked the Speaker of the Oregon House to do a memorial to Mr. Schoemaker and she agreed. He said Mr. Schoemaker's idea has produced \$12 billion for fish and wildlife conservation since it was started.</p>
<p>Stan Steele Corvallis, Oregon</p>	<p>Stan Steele, President of Oregon Outdoor Council (OOC), distributed a letter requesting a celebration of the 75th Anniversary of the PRA and successes of the world's greatest fish and wildlife restoration and conservation program. Steele resides near Finley Refuge on a wildlife rehabilitation project that ODFW helped him with. He said the Summer Lake Management area was the first project in Oregon purchased by PRA funds. What we really want to see as sportsmen in Oregon is a public relations campaign acknowledging the support that all Oregonians and wildlife get from our hunting and fishing excise tax dollars. He ran a short video on the <i>75th Year of the Wildlife and Sportfish Restoration Program</i>. Steele said OOC is going to work as a sporting community throughout Oregon to work on this education process to ensure that PRA and our wildlife and communities is enhanced and grows.</p>

1
2 **Exhibit A: COMMISSION MINUTES**

3 Chair Levy asked if the Commission had edits to the draft March 8, 2013 minutes.
4

5 Commissioner Akenson referred to page 12, lines 3-4, and the phrase “Staff has more
6 time to get started on that research to actually starting seeing those effects relative to the
7 current situation we have with the depredation.” Change to read, “**Staff has more time**
8 **to get started on predator /predator and predator/ prey research because those**
9 **affects have not yet been seen relative to the current situation we have with the**
10 **depredation of livestock.”**

11
12 Vice-Chair Finley referred to page 12, line 40, and said strike the fifth word “to” and
13 substitute “**for the**” and add the word “**to**”, so the sentence would read, “Chair Finley
14 asked the Commission if they were comfortable with the Department moving forward to
15 find mechanisms **for the** state **to** delist the Gray Whale and the Brown Pelican...”

16
17 *Action: Vice-Chair Finley moved that the Commission approve the minutes of*
18 *March 8, 2013 minutes as amended. Commissioner Wolley seconded the motion*
19 *and the motion carried unanimously by a vote of six.*
20

21 **Exhibit B: 2013 REGULATIONS FOR COASTAL PELAGIC SPECIES AND**
22 **PACIFIC HALIBUT FISHERIES**

23 Troy Buell, State Fisheries Management Program Leader with Marine Resources
24 Program, reported on the following fishery regulations:
25

26 *2013 Coastal Pelagic Species (CPS) Fisheries.* Sardine fisheries off of Oregon and all
27 species are managed under Pacific Fisheries Management Council (PFMC) Coastal
28 Pelagic Species Management Plan. He described the sardine categories, and said the
29 2013 harvest levels for Pacific sardine were set by PFMC in November 2012. The
30 federal regulations will publish this month. The State may set consistent or more
31 restrictive regulations. Staff has seen a steady decline in sardine stock that has resulted
32 in a 39% decreased of 39% from 2012 because one change was made to the population
33 model and an additional year of survey and fishery data was added to the model.
34 Applying harvest control rules to the outputs of that stock assessment resulted in a
35 coastwide maximum harvest guideline of 66,495 metric tons (mt), which is reduced by
36 various set asides leaving 57,495 mt for the directed fishery across three fishing periods.
37

38 *2013 Pacific Halibut Fisheries.* The International Pacific Halibut Commission (IPHC) sets
39 harvest levels for regions. PFMC can set regulations and allocates the harvest to Area
40 2A (covers Washington, Oregon, and California) to different fisheries known as a Catch
41 Sharing Plan (CSP). National Marine Fisheries Service implements IPHC regulations
42 and PFMC recommendations into federal rule. The states are responsible for setting
43 certain seasons. He said changes to CSP were set by PFMC in November 2012.
44 Regional harvest levels were adopted by IPHC in January 2013. Federal regulations
45 published on March 15, 2013. States may set consistent or more restrictive regulations.
46

1 Buell discussed halibut fisheries operating off of Oregon and the six sport fisheries
2 seasons. The 2013 Area 2A harvest level is set at 990,000 pounds. He said expect to
3 see a reduction in 2014 of allowable harvest for Area 2A. The only change this year
4 affects the Central Coast Subarea Sport fishery. When the Area 2A catch level goes
5 below 700,000 lbs., staff changes that allocation to 75% of the Spring All-Depth fishery;
6 0% to the Summer All-Depth fishery; and 25% to the Nearshore fishery.
7

8 Buell said due to the delay of this Commission meeting into May some halibut fisheries
9 had been scheduled to open May 1 or May 2. Staff adopted those seasons through
10 temporary rule and will ask the Commission to adopt those into permanent rule. He said
11 the federal rules cited in *Attachment 3 – Draft Oregon Administrative Rules* contained an
12 error in the open days of the week for the Columbia River subarea. The correction to that
13 federal rule was published on May 7. Staff will add that citation to the list of documents
14 adopted by reference when those rules are filed but it does not appear in the
15 Commission's packet today.
16

17 Buell discussed the following halibut seasons:

- 18 • Spring all-Depth. See calendar in PowerPoint presentation, page 8.
- 19 • Summer all-depth sport fisheries. No change.
- 20 • Nearshore sport fishery has been opened seven days per week May 1 - October
21 31. Staff recommends changing to a three day season Thursday through
22 Saturday starting May 2. Open every Thursday through Saturday thereafter until
23 the quota is obtained.
- 24 • Columbia River subarea spring sport fishery opens every Friday to Sunday.
25 Previously scheduled to close third Sunday in July, now extended to July 28.
26 Summer fishery will be status quo: open every Friday through Sunday, August 2 –
27 September 30. Both fisheries close early if quota attained.
- 28 • South of Humbug sub-area sport fishery open 7 days per week, May 1 – October
29 31. It will not close if quota is obtained.
- 30 • Commercial directed longline fishery will open for 10 hours every other
31 Wednesday starting June 26; those openers are set by IPHC. Will run until quota
32 is attained.
- 33 • Commercial salmon troll incidental fishery will open May 1 and stay open during
34 commercial salmon season until their quota is taken. For 2014, set to change to
35 April 1 to align better with the typical opening of salmon fisheries off of Oregon.
36

37 *Groundfish Transportation.* Buell said when the federal Individual Trawl Quota Program
38 (ITQ) was implemented changes made to federal rules regarding split deliveries put them
39 out of sync with state rules. Under federal rule only vessels fishing under the ITQ
40 Program may split an offload between multiple buyers across state lines, and the vessel
41 must have a federally certified observer aboard observing as the vessel moves from
42 plant to plant during the offloading process. Under Oregon rule, vessels may split an
43 offload between multiple Oregon licensed buyers, or deliver part of the catch to another
44 state and then to an Oregon dealer provided the transportation report is completed and
45 possessed. Regulations prohibit vessels from delivering part of their catch to an Oregon
46 buyer first and then the rest to another state. You are required to fill out a transportation
47 report contains most of the information as a fish ticket except the weight of the fish is

1 estimated by the Captain rather than being a certified scale weight. He said it is difficult
2 to track and enforce limits on catches when they move into another state because
3 Oregon's fish ticket system outside the ITQ fishery is not linked. It is not a concern when
4 a federal observer stays onboard the vessel during the entire offload process. Under
5 ITQ those landings can be matched up when they are delivered across state lines.

6
7 *Commercial Spot Shrimp Fishery.* Buell said spot shrimp is a pot or trap fishery with no
8 trawling allowed. It is a high value, low volume fishery with a lot of variability. On
9 average only about 7,700 pounds of spot shrimp have been landed into Oregon since it
10 became a trap only fishery. It is valued at about \$69,000 per year on average paid to the
11 vessel, an average of about \$9 dollars per pound paid to the vessel. Only one to six
12 boats participate with an average of two boats because it is a specialty market.

13
14 Buell said in 1999, Oregon entered into a reciprocal fishing agreement with the State of
15 Washington. See *Attachment 7 – ODFW-WDFW Spot Shrimp Reciprocal Fishing*
16 *Agreement (January 27, 2007)*. The agreement states that if you catch spot shrimp in
17 federal waters off of Washington and deliver them back into Oregon you are required to
18 have the Washington state permit and vice versa for Oregon. In 2003, the targeted
19 fishing with trawl gear was eliminated although Oregon retained a provision to allow
20 catching of spot shrimp using groundfish troll gear or pink shrimp troll gear when
21 seasons for those fisheries were open; that was intended to allow people to retain
22 incidental amounts. In 2009, the Developmental Fisheries Program was suspended and
23 spot shrimp was reverted to open access. There is no permit required and anybody with
24 a commercial fishing license and a boat license can prosecute the fishery. He said
25 recently staff had interest from fishermen on the north coast in fishing federal waters off
26 Washington and delivering back into Oregon. We are still honoring that reciprocal fishing
27 agreement but we do not have the best mechanism to implement it any longer.

28
29 Staff recommends that the Commission adopt rules (see *Attachment 3 – Draft Oregon*
30 *Administrative Rules*) to prohibit vessels from possessing or landing spot shrimp taken in
31 federal waters off of Washington unless the vessel has the appropriate Washington state
32 permit and licenses. Buell said the State of Washington has already adopted similar
33 permanent rules to prevent Washington fishermen from fishing in federal waters off of
34 Oregon without Oregon licenses and permits. He said staff discovered a loophole not
35 accounted for in the initial drafting of the rules that would allow fishermen to actually
36 target spot shrimp using groundfish pink shrimp trawl gear. Staff is asking the
37 Commission to adopt regulations to clarify that only an incidental amount of spot shrimp
38 may be taken in using those gear types.

39
40 *Housekeeping revisions to Commercial Regulations.* In July 2012, the Commission
41 adopted restructuring and reorganization of commercial fishing regulations in Divisions
42 005 and 006. Since then, staff has identified minor typographical errors and
43 inconsistencies in the adopted regulations.

44
45 **Public Testimony:** There was no public testimony.
46

1 Commissioner Webber referred to incidental catch of spot shrimp and said he heard that
2 trawl people with pink shrimp gear could target the spot shrimp. He said assuming they
3 can do that how do you define "incidental"? Buell said staff left the definition of
4 incidental to the discretion of law enforcement officers to determine if there was an
5 incidental amount of catch or if there was targeting going on of spot shrimp.

6
7 Commissioner Anderson shared Commissioner Webber's concerns and his question
8 about the lack of definition of "incidental". She said Buell said there is an average of
9 7,700 pounds taken in the shrimp fishery per year. What years were looked at to develop
10 that average? Buell said he looked at 2004 through 2012 landings for the average
11 because the trawl fishery was eliminated in 2003. That fishery had previously been
12 taking a pretty substantial amount but is no longer available because of the trawl gear
13 restriction. He said it was highly variable and ranges from 1,392 pounds to 19,244
14 pounds in any given year over that time period.

15
16 OSP Lieutenant (Lt.) David Anderson said for "incidental" there is no hard line drawn. It
17 is a course of an investigation by the officer to look at the landing. If the total landing
18 where 20,000 pounds of which should have been the primary target and a certain
19 percentage of that is deemed too high of the incidental then the officer will investigate
20 and make an appropriate decision; an investigation occurs with a lot of elements at play.

21
22 Chair Levy said do we have a given percentage that we have talked about? Lt.
23 Anderson said no, there is no percentage written somewhere. It is basically up to the
24 officer on the scene to determine, based on the landing, what is typical in a landing
25 because they know that from past experience and work at the dock what a typical
26 landing will look like percentage-wise. If the landing comes in where it is abnormal then
27 that will definitely draw the attention of the Trooper. An investigation would ensue and an
28 appropriate course of action would be taken.

29
30 Commissioner Webber said when he asking the Judge to draft instructions for the jury, I
31 tell him that incidental means more than the officer thinks was appropriate? Lt.
32 Anderson said it could be difficult for a prosecutor, absolutely. We would have to have
33 expert testimony from the officer's experience and then bring in ODFW staff to testify as
34 to what a typical landing would be and composed of. He said it would be a determination
35 by the court if based on the facts of the case if the landing was truly not incidental.

36
37 Commissioner Anderson asked if within the range that Buell discussed (1,392 - 19,244
38 pounds) if there is any trend that can be seen or is it really up and down. Buell said he
39 did not see any trend. It was all over the map, up one year and down the next.

40
41 Commissioner Anderson said this is something that we really need to watch closely. She
42 is hearing interest from small boat fishermen who are seeing the value in this fishery.
43 From the few spot prawn fishermen she has talked to this year they are already seeing
44 an increased effort out there so far this year and expect that to continue. They are
45 concerned about lack of harvest guidelines or permits required for the fishery. She
46 doesn't know if all of that increased effort will actually lead to increased landings. She
47 said these are very elusive critters and very hard to target.

1
2 Buell said staff will be keeping an eye on landing fishery although he would agree that
3 the interest and effort may not actually result in an increase in landings because it is a
4 difficult fishery to prosecute. It occurs in deep water which makes it difficult for small
5 boats to operate a trap fishery in deep water.

6
7 Legal Counsel Steve Sanders followed up on the incidental take criteria. He said in other
8 fisheries for NOAA where we get incidental take permits the species or run that we are
9 going after has to constitute less than 50% of the wild run. So, if you have more than a
10 50% wild run you cannot be incidentally taking any fish out of that run unless you have
11 very selective methods. He said the more legalistic test is that if the fishermen is
12 targeting the shrimp, for example, either by having more than half of the catch or using
13 methods and gear which are clear that they are aiming at this fish rather than what the
14 main fish is that would be what we would use as the legal test. Then the fact that you
15 caught a much higher percentage of shrimp than your fellow fishermen would be an
16 indicator of or some evidence of having targeted the wrong species. Counselor Sanders
17 said the real legal test we are aiming at is you cannot target these fish in your fishery.

18
19 Lt. Anderson said although this has been an area of discussion it has not been a
20 problem to this point related to this fishery. It doesn't mean it could not be in the future.
21 Commissioner Webber said he assumed if it were a problem for OSP and they were
22 having a problem that they will come see the Commission. Chair Levy agreed.

23
24 *Action: Commissioner Akenson moved to adopt the staff recommendations for*
25 *2013 CPS fisheries including Pacific sardine and Pacific halibut fisheries,*
26 *commercial spot shrimp fisheries, landing and transportation regulations, and*
27 *housekeeping revisions to commercial regulations, as proposed in Attachment 3.*
28 *Commissioner Anderson seconded the motion and the motion carried*
29 *unanimously by a vote of six.*

30
31 **Exhibit C: 2013 OCEAN SALMON REGULATIONS FOR STATE WATERS**

32 Steve Williams, Fish Division Assistant Administrator for Marine and Columbia River
33 Fisheries, said the seasons currently in place by temporary rule were adopted by PFMC
34 on April 10. On May 1 the National Marine Fisheries Service (NMFS) adopted for federal
35 waters the same regulations. During a slide presentation he discussed the 2013
36 Schedule for Ocean Salmon Fisheries. He said with the cancelation of the April 26
37 Commission meeting, staff put into place temporary rules on May 1. He said the March 8
38 Commission meeting overlapped with a PFMC meeting so staff emailed the Commission
39 a summary of the PFMC Preliminary 2013 Ocean Salmon Fishery Options.

40
41 Williams discussed three subareas, Columbia River area, central Oregon coast, and the
42 Klamath Management Zone (KMZ), and the following 2013 forecasts:

- 43 • Klamath fall Chinook – 727,000.
- 44 • Sacramento index fall Chinook – 834,000
- 45 • Columbia River fall Chinook – 678,000. 88,000 Lower Columbia natural (LCN)
- 46 Tules are ESA stock. Upriver Brights are up at 433,000.

- Coho. In the Columbia 525,000 hatchery and 46,000 natural. Oregon Coast natural (OCN) stock – 191,000.

Primary Constraints:

- Chinook. 41% total exploitation rate on LCN Tules. 16% ocean harvest rate on age 4 Klamath fall Chinook as surrogate for listed California coastal stocks.
- Coho. 15% total exploitation rate on LCN and 30% allowable rate on OCN coho.

For the 2013 Ocean Sport Seasons, Williams said the page numbers in his slides corresponded with *Attachment 4 – Ocean Salmon Management Measures & Impacts (Preseason Report III)*, which has the real detailed description of these fisheries.

- *2013 Ocean Commercial Season*
 - US/Canadian Border – Cape Falcon. Non-Indian (page 1).
 - May 1 – June 30 or 29,300 Chinook quota.
 - July 1 – September 17 or 14,700 Chinook quota or 14,220 marked coho quota.
 - South of Cape Falcon (Chinook only)
 - Falcon – Humbug (page 2). April 1 – August 29 and September 4 – October 31.
 - South of Humbug (OR KMZ) (page 2). April 1 – August 29 (9,000 Chinook quota June – August) and September 16 – September 27 (1,000 Chinook quota).
- *2013 Ocean Sport Season:*
 - North of Falcon (NOF) – Columbia River subarea (page 7)
 - June 8-21 or 8,000 marked Chinook NOF quota; 2 Chinook per day.
 - June 22 – September 30 or 30,000 marked coho quota or 9,900 Chinook guideline; 2 salmon per day, only one Chinook.
 - Falcon to Humbug (page 8)
 - March 15 – October 31 (Chinook).
 - Coho retention allowed: July 1 or 10,500 marked coho quota for Falcon to OR/CA border and September 1-30 or 16,000 coho quota (days per week).
 - 2 salmon per day.
 - South of Humbug (Oregon – KMZ) (page 8)
 - May 1 – September 8 (Chinook).
 - Coho retention allowed: July 1-31 or 10,500 marked coho quota for Falcon to OR/CA border.
 - 2 salmon per day.

Williams said in addition to the fisheries structure just presented staff will return before the Commission in June to look at the 2013 Coastal Chinook and Coho Fisheries.

Public Testimony: There was no public testimony.

Action: Commissioner Wolley moved to adopt the 2013 ocean recreational and commercial salmon seasons as proposed by staff in Attachment 5. Commissioner

1 Anderson seconded the motion, and the motion carried unanimously by a vote of
2 six.

3
4 **Exhibit D: UNATTENDED VEHICLES PARKED IN VIOLATION OF RULES**

5 Nancy Breuner, Wildlife Area (WA) Operations Coordinator, said in 2010, ODFW
6 expanded the SIWA parking permit to include additional WAs effective January 1, 2012.
7 During implementation, law enforcement noticed that the OAR did not specify that a
8 citation issued to an unattended vehicle in violation of this parking permit requirement
9 would be issued to the registered owner. To rectify this situation a temporary rule was
10 adopted by the Commission in November 2012 that is effective through today. Legal
11 Counsel helped clarify the temporary rule in *Attachment 3 – Draft Oregon Administrative*
12 *Rules*, paragraph (8)(c), page 2. She said the new text specifies that the person who is
13 the registered owner of an unattended motor vehicle that is in violation can be issued a
14 citation. Staff recommends the Commission adopt this temporary rule with these
15 changes into permanent rule.

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

18
19 Vice-Chair Finley was troubled by the last part of section (c), line 41, **“It is an affirmative**
20 **defense to a prosecution of the registered owner of a vehicle under subsection (8)**
21 **(a) of this section that the use of the vehicle was not authorized by the owner,**
22 **either expressly or by implication.”**, in terms of personal accountability and
23 responsibility. He said if he loaned his pick-up to his son-in-law, his son-in-law has his
24 permission but he is responsible for all driving actions at that time. I am going to get the
25 citation because he parks in the wrong spot in my licensed and registered vehicle?
26

27 Captain Jeff Samuels said that is in there based on the vehicle code parking statutes. It
28 gives the registered owner some ability, when they are not the driver of the vehicle that
29 parked in that location and they did not know that their vehicle was going to be used
30 parked at a WA with no parking permit, to have an affirmative defense if a state Trooper
31 or any officer issues a citation to the unattended vehicle. The registered owner, relative
32 to this, can be given a citation and would have to go to court but would have the ability
33 with that language to have an affirmative defense to show the judge that it wasn't me.
34

35 Vice-Chair Finley recommended clarifying language at the end of the sentence on line 43
36 that states, “.., **or was not driving the vehicle.**”, as an affirmative defense if he was the
37 registered owner.

38
39 Captain Jeff Samuels said if it is my vehicle and I am with the vehicle and my son-in-law
40 is the driver of the vehicle and we park at the WA without a parking permit in violation of
41 the rule it would be an affirmative defense on why the registered owner should not be
42 responsible. He said so I would have some concern about that.

43
44 Vice-Chair Finley said his interest was when you loan the vehicle out and you are not
45 even there. He is responsible for what happened when someone else was driving his
46 vehicle with his permission.
47

1 Commissioner Webber was curious how a rental car business would think this is going to
2 work. He was not comfortable with just putting a blanket responsibility on the registered
3 owner. He said there is a need for a Trooper to be able to issue a citation without sitting
4 at the car for the next 48-hours waiting for the person to show up.

5
6 Captain Samuels said he did not have a copy of the unlawful parking statutes in the
7 Vehicle Code but staff was trying to mirror some of that language to ensure it is the same
8 language. Troopers have issued Snow Park and parking citations on Interstates and
9 different locations for years. There is a presumption that it is the registered owners'
10 vehicle and they may be the one that is in the vehicle in most situations; so, it gives OSP
11 that ability to still issue a citation

12
13 Legal Counsel Erin Donald said there are considerations in how much we want to insert
14 law enforcement into family disputes or contractual disputes with rental car agencies and
15 renters. She asked the Commission to keep that in mind when deciding to act on this.
16 She said there is balancing going on but to think about whether law enforcement wants
17 to be figuring out whether a son or daughter was authorized to drive the vehicle.

18
19 Commissioner Webber said if the person is present who is the driver, he or she gets the
20 ticket without regard to the registered owner? Captain Samuels said correct, that was
21 happening in the timeframe prior to the temporary rule. The citations that OSP was
22 issuing were being issued to actual individuals that we determined were the driver and
23 that parked the vehicle at the WA. Commissioner Webber said this gives us the ability to
24 deal with the people that are not present. Captain Samuels said exactly. Troopers do
25 not want to spend hours waiting for the driver of the vehicle to return so we can issue a
26 citation to that person.

27
28 Ron Anglin, Wildlife Division Administrator, asked the Commission to set aside this issue
29 until after the Executive Session so staff could review the specific language and statutes
30 to capture all of the Commission's concerns.

31
32 Chair Levy agreed and asked staff to consider Vice-Chair Finley's comments as well.

33 34 **OTHER BUSINESS**

35 **Executive Session**

36 Chair Levy said the Oregon Fish and Wildlife Commission will now meet in executive
37 session for the purpose of conducting deliberations related to litigation filed against the
38 Department. The Executive Session is held pursuant to ORS 192.660 (2) (h) which
39 allows the Commission to meet in Executive Session to consult with legal counsel
40 concerning current litigation or litigation likely to be filed. Representatives of the news
41 media and designated staff shall be allowed to attend the executive session. All other
42 members of the audience are asked to leave the room. Representatives of the news
43 media are specifically directed not to report on any of the deliberations during the
44 executive session, except to state the general subject of the session as previously
45 announced. No decision may be made in executive session. At the end of the executive
46 session we will return to open the public meeting and welcome the audience back to
47 hear me adjourn this public meeting.

1
2 Chair Levy reconvened the Commission meeting at 1:55 pm and returned to Exhibit D.

3
4 **Exhibit D: UNATTENDED VEHICLES PARKED IN VIOLATION OF RULES**

5 Captain Jeff Samuels said Nancy Breuner was bringing copies of parking violation
6 statutes in the vehicle code. He said two statutes allow parking for the issuance of
7 citations to unattended vehicles. It contains the exact same language currently in the
8 proposal and has been in statute since 1987.

9
10 Chair Levy said Vice-Chair Finley objected to the original proposed language. She
11 asked for a motion or arguments in favor or against what Vice-Chair Finley would like to
12 have added to the wording. He had suggested the addition of, “.., **or was not driving**
13 **the vehicle.**” at the end of line 43.

14
15 Vice-Chair Finley said you could substitute, “...**was not present during the action.**” t

16
17 Chair Levy said that Legal Counsel says that adding “.., **or was not driving the**
18 **vehicle.**” is okay.

19
20 Legal Counsel Erin Donald suggested adding, “..**or was not present.**”, because if the
21 owner was a passenger in the vehicle you could run into some unintended issues.

22
23 Commissioner Akenson asked that the Commission just deal with the rule as written that
24 matches all the other statutes. Commissioners Anderson and Webber agreed with
25 keeping the parking regulations consistent.

26
27 Commissioner Wolley said keeping the regulation consistent does now allow the
28 Commission to address the concern of Vice-Chair Finley; it negates the ability to make
29 an adjustment. He was willing to address Vice-Chair Finley’s concerns. Chair Levy
30 agreed and said we have a three- to-three tie. Commissioner Anderson said she was not
31 opposed to addressing Vice-Chair Finley’s concerns.

32
33 Nancy Breuner arrived and distributed a copy of *ORS 498.152 (1)* and *ORS 498.154(2)*,
34 and a copy of *ORS 811.555(4)*, *ORS 811.575(3)*, and *ORS 811.590(2)*.

35
36 Legal Counsel Erin Donald distributed her handwritten amendment to the Commission.

37
38 Chair Levy approved Legal Counsel Donald’s wording. She said if the Commission votes
39 on this amendment refer to it as the “amended language”. Does the Commission need
40 to read this for the record? Counselor Donald said read it into the testimony to make it
41 very clear and state the amended language because it is not as proposed in the packet.

42
43 Commissioner Webber said the amendment says the affirmative defense is that you did
44 not authorize the general use but the specific use of the parking of the vehicle?
45 Counselor Donald said are you looking at the last phrase “...**[or the owner was not**
46 **present when the vehicle was parked.]**”?

1 Commissioner Webber said he was looking at, "***It is an affirmative offense to a***
2 ***prosecution of the registered owner of a vehicle under subsection (8)(a) that the***
3 ***use..***" and then it states "***..[or parking].***" He was not sure he would agree with "[or
4 parking]". The way he read this before if they authorize the person to have the vehicle
5 that would not apply. Counselor Donald said right. Commissioner Webber said if they
6 did not authorize a person to park that they would be able to avoid a citation. Counselor
7 Donald suggested striking out, "***..[or parking].***", to read, "***...use was not authorized***
8 ***by the owner, either expressly or by implication...***" So, the owner was not present
9 when the vehicle was parked. She said that parked is okay because that is what the
10 violation is. Commissioner Webber said that would be fine. Counselor Donald said that
11 clarifies it.

12
13 Commissioner Akenson said with the parking permits if we have a hunting license we get
14 a parking permit? Breuner said correct. A hunting license and Sports Pac come with a
15 free annual parking permit. Commissioner Akenson said typically any sportsmen that
16 were parking at a WA that required a parking permit probably had one. They maybe did
17 not have it displayed. Is that the main issue? Breuner said that could be the case. It is
18 clear on the parking permit that it must be displayed in a conspicuous area of the vehicle
19 to let law enforcement enforce that.

20
21 Commissioner Akenson said she did not like the new language. It is a complication that
22 is unnecessary. If you own a vehicle and you have a hunting license, you have a parking
23 sticker or parking permit. She doesn't see that there is a need for all of this about if
24 somebody else drives your vehicle. If you are the owner and you have a parking permit
25 and someone else uses your vehicle they have a parking permit as well. That is the
26 responsibility of putting it on your windshield.

27
28 Chair Levy said this does not address hunting. Commissioner Akenson said no but the
29 typical kind of person who would be parking at a WA, given Vice-Chair Finley's example,
30 would be a hunter. You can get those permits as well if you buy a conservation stamp.

31
32 Vice-Chair Finley said he is just trying to have an affirmative defense. If you loan a
33 vehicle to someone else, he should not get a ticket nor should it go on his driving record
34 because someone that he lawfully loaned a vehicle to fails to either obtain a permit or
35 display the permit; that is their responsibility. He said it is unethical and misdirected.

36
37 Chair Levy asked if the parking permits go on their driving records. Captain Samuels
38 said it is a wildlife offense but not a DMV implication so he did not think it would go on a
39 driving record.

40
41 Commissioner Akenson asked that the Commission first vote on whether they wanted
42 the amended language or not.

43
44 Chair Levy asked if the Commission wanted the amended language or to return to the
45 original language in the packet.

46

1 Commissioner Webber asked if the amended language included “..[or parking]” in the
2 fourth line, or if was eliminated.

3
4 Chair Levy said it was eliminated. The amended language states: ***It is an affirmative
5 defense to a prosecution of the registered owner of a vehicle under subsection
6 (8)(a) of this section that the use was not authorized by the owner, either expressly
7 or by implication [or the owner was not present when the vehicle was parked.]***

8
9 *Action: Commissioner Akenson moved to vote on this language on
10 whether or not we want to include it on the final vote. Commissioner
11 Wolley seconded the motion.*

12
13 Commissioner Webber said what are we voting on? Chair Levy said whether we
14 are going to include this in the final rule. Commissioner Webber said an aye vote
15 is that we are? Chair Levy said an aye vote means we are going to include it in
16 the final rule.

17
18 *Commissioners Webber, Anderson, Wolley, Finley, and Chair Levy voted
19 aye. Commissioner Akenson voted nay. The motion passed with five aye
20 votes and had one nay vote from Commissioner Akenson.*

21
22 Chair Levy said does the Commission need to vote on the amendment as part of the
23 deal? Counselor Donald said vote on it as part of the deal and state specifically rule
24 number OAR 635-008-0151 and the amendment is in subsection (c).

25
26 *Action: Vice-Chair Finley moved to adopt the rule regarding procedures for
27 issuance and enforcement of parking permits for Department wildlife areas and
28 amend OAR Chapter 635, Division 008, as amended to read as follow: ***It is an
29 affirmative defense to a prosecution of the registered owner of a vehicle
30 under subsection (8)(a) of this section that the use was not authorized by
31 the owner, either expressly or by implication [or the owner was not present
32 when the vehicle was parked.]****

33
34 Legal Counsel Erin Donald said that was not clear because you omitted the first
35 sentence of (8)(c) (see lines 39-41) which she believes he intended to include.

36
37 *Vice-Chair Finley amended his first motion by stating: “***A person who is the
38 registered owner of an unattended motor-propelled vehicle parked in
39 violation of the restrictions established and posted under OAR 635-008-
40 0146 through 635-008-0151 shall be presumed to have violated OAR 635-
41 008-0151(8)(a).***” Then starting out with “***It is an affirmative defense to a
42 prosecution of the registered owner of a vehicle under subsection (8)(a) of
43 this section that the use was not authorized by the owner, either expressly
44 or by implication [or the owner was not present when the vehicle was
45 parked.]*** Commissioner Webber seconded the motion, and the motion passed
46 unanimously.*

- 1 **ADJOURN**
- 2 Chair Levy adjourned the public meeting at 2:15 p.m.

Approved