



Oregon Fish and Wildlife Commission Minutes

Meeting: Friday, July 12, 2013 - 10:00 am
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
Michael Finley, Vice-Chair
Bob Webber, Commissioner
Holly Akenson, Commissioner
Gregory J. Wolley, Commissioner
Laura Anderson, Commissioner

Roy Elicker, Director
Curt Melcher, Deputy Director
Erin Donald, Assistant Attorney General
Michelle Tate, Wildlife Division

8 **MEETING**

9 On Friday, July 12, 2013 at 10:00 a.m., Chair Bobby Levy called the Oregon Fish and
10 Wildlife Commission (the Commission) meeting to order.
11

12 **DIRECTOR'S REPORT** 13 **Adopt Temporary Rules**

14 Director Roy Elicker asked the Commission to adopt the 20 temporary rules all relating to
15 the opening and or closing of fisheries on pages 1-5 of the tan-colored agenda.
16

17 *Action: Chair Levy moved to approve the 20 administrative temporary rules.*
18 *Commissioner Webber seconded the motion, and the motion carried unanimously*
19 *by a vote of five. Commissioner Akenson lost phone connection and was unable*
20 *to vote.*
21

22 **Exhibit A: COMMISSION MINUTES**

23 Director Elicker said that there had been urgency to adopt the Commission's draft June
24 6, 2013 minutes related to dismissing the court case on commercial fisheries issues. He
25 was advised by Legal Counsel that the case has already been dismissed. He proposed
26 deferring the June 6 draft minutes until the Commission's August 2 meeting in Eugene to
27 allow staff time to make needed edits to the minutes.
28

29 **Exhibit B: WOLF CONSERVATION AND MANAGEMENT PLAN RULE REVISIONS**

30 Ron Anglin, Wildlife Division Administrator, said the new rules identify that the Oregon
31 Department of Fish and Wildlife (ODFW) has the ability to take wolves and conduct lethal
32 control activities. He said the new rule is specific to Phase 1 of the Plan per the
33 Settlement Agreement. The Addendum (see *Attachment 3 – Addendum to 2010 Oregon*
34 *Wolf Conservation and Management Plan*) clarifies that in places where the new rule is
35 not consistent with Plan, the new rule governs. Phase II rule references of Phase I in

1 “new rule” will reference “old rule” Phase I. He said this issue will be addressed during
2 the 2015 Plan Evaluation. Anglin highlighted the new rule:

- 3 • ODFW may conduct lethal control of depredating wolves with certain conditions
4 while in Phase I of Plan.
- 5 • Changes the definition of “chronic” depredation incidents to four qualifying
6 incidents within a six month period.
- 7 • Identifies specific criteria for depredation incidents and when they qualify and/or
8 count toward lethal control.
- 9 • Non-lethal measures, although not required to be conducted by the landowner,
10 are a requisite to qualify a depredation in some circumstances.
- 11 • First depredations by “new wolves” always count.
- 12 • Requires coordination with a wider array of interests once wolf activity is known in
13 an area.
- 14 ▪ Directs specific actions within areas of wolf depredation.
- 15 • Transparency and public disclosure required prior to initiating lethal control
16 actions.
- 17 • Provides criteria for when lethal control ends and when reinstated.
- 18 • Contains a clause for extreme circumstances.

19
20 Anglin overviewed the subsections in *Attachment 4 – Draft Oregon Administrative Rules*:

21
22 *Subsection (6) – Lethal take to address chronic livestock depredation.* Provides general
23 authorization for ODFW take of wolves. Identifies that any of the control actives must be
24 consistent with conditions of lethal control tied directly to Subsection (7) through
25 Subsection (10).

26
27 *Subsection (7) - Conditions for Lethal Take by ODFW.* Once wolves become
28 established in an area, ODFW designates an Area of Know Wolf Activity (AKWA).
29 Provides actions ODFW will coordinate with landowners to provide information on:

- 30 • Wolf Plan and Rules.
- 31 • Wolf management and conservation.
- 32 • Documentation and reporting procedures.
- 33 • Non-Lethal Measures to minimize conflicts.

34
35 Anglin discussed actions that ODFW would take after a depredation occurs:

- 36 • Designates an “Area of Depredating Wolves” (ADW).
- 37 • Prepares an area-specific conflict deterrence plan which identifies non-lethal
38 deterrence measures which are effective in different circumstances.
- 39 • Plans are updated as new information becomes available.
- 40 • (7)(e) Definition of chronic - four confirmed qualifying incidents of depredation of
41 livestock within previous six months by the same wolf or wolves.
- 42 • (7)(f) ODFW Director issues and makes publicly available, prior to exercise of
43 lethal force, a written lethal control decision.

44
45 *Subsection (8) – Qualifying Contingencies and Counting Incidents.* Defines an incident of
46 depredation (not unlike existing application):

- 1 • All first incidents not within an AKWA count toward the definition of chronic.
- 2 • Within any AKWA or ADW, all attractants (e.g., carcass piles or disposal sites,
- 3 other unnatural attractants) must be removed, treated or disposed of at least
- 4 seven days before the depredation. Note: this is not a regulatory requirement.
- 5 • Within ADW, producer must be implementing at least one non-lethal measure
- 6 identified in the conflict deterrence plan.
- 7 • The non-lethal measure chosen may be the same as when prior to depredation.
- 8 • Non-lethal measure within an ADW must address open-range livestock situations.
- 9

10 Anglin said in Subsection (8), page 6, line 32, the phrase "...under subsection
11 (7)(d)(C)..." should read "...under subsection (7)(d)(B)..." ; not capital C.

12
13 *Subsection (9) – Transparency and Public Disclosure.* Prior to using lethal force, ODFW
14 will work with local landowners, organizations and interested parties and the public to
15 provide them with information on website; required before lethal control actions
16 authorized. Staff is making these changes to ODFW website.

17
18 *Subsection (10) - Duration of chronic depredation lethal take authority; reinstatement of*
19 *Take Authority.* Terms and conditions ODFW would implement lethal control and how
20 long the lethal control will last.

- 21 • Lethal control ends if targeted wolves are removed.
- 22 • Ends 45 days after issuance unless another qualifying incident occurs.
- 23 • Reinstatement if qualifying depredation within two months of the last one.
- 24 • Ends if wolves leave the ADW.
- 25

26 *Subsection (11) – Lethal take in Extreme Circumstances.* Change provides the director
27 with the ability to direct ODFW to take necessary actions when dealing with rapidly
28 escalating depredation situations beyond the reasonable means of ODFW to stop it. .
29 Four or more depredations within seven days; expected to be used very rarely.

30
31 Anglin said the Phase II Provisions (see pages 10-12) clarifies that this agreement
32 applies to Phase I. It deletes the current Phase I reference and replaces it with the actual
33 Phase I wording.

34
35 **Public Testimony:** There was no public testimony.

36
37 Commissioner Webber asked how fast the adjustment would be made if we have a
38 concern of wolf depredation outside of AKWA or the ADW. Russ Morgan, Wolf Program
39 Coordinator, said once the depredation is confirmed the area of depredating wolves will
40 be changed almost immediately.

41
42 Commissioner Akenson asked if the rule can be written more clearly. Anglin said under
43 the settlement terms the rule cannot be rewritten. It will be in place until the end of July
44 2015. At that time the rule is opened for review and could be revised during that review.

45

1 Commissioner Wolley said in relation to transparency and public disclosure will there be
2 a checkpoint after the new rules are implemented? Are the summaries accumulative or
3 per incident? Will there be statement of finding at a certain check point or period of time
4 that will determine that it is time to reflect on the new rules and how they have been
5 implemented? Anglin said we will post individual investigations and there will be two
6 check points within that. If there is a depredation with four qualifying incidences this
7 would serve as a check point; the Director would need to make a finding on whether to
8 use lethal control. The annual review to the Commission would summarize the
9 depredation and how things are working. During the 2015 review we will have the ability
10 to adjust the rules.

11
12 Russ Morgan gave an overview of the revised website and said it will inform producers of
13 what is going on in the area. Staff is working to make the site more interactive and useful
14 and welcomes any comments from producers. Morgan said cross linking on the website
15 should help the public understand how staff determines an AKWA and depredations.

16
17 Commissioner Wolley asked if providing comments was limited to producers only or can
18 other stakeholders provide input too. Morgan said other stakeholders can provide input.
19 He noted the use of "prevent" versus "minimize" and said staff elected to use minimize
20 because it is used in current rule language. He said prevention is considered
21 unachievable. Even though experts believe that non-lethal is not effective all of the time,
22 staff did not want to mislead anyone by using the word prevent.

23
24 Chair Levy asked how many depredations would count outside of the AKWA. Morgan
25 referred to page 6 in Attachment 4 – Draft Oregon Administrative Rules. In sub-
26 paragraph (A), line 9 states "Only the first confirmed depredation by wolf or wolves may
27 count as a qualifying depredation." Morgan said ODFW recognizes that producers have
28 different ways to track non-lethal measures used and that non-lethal measures can
29 change over time. In certain cases other agencies will have a role when we say you
30 need to remove and dispose of carcasses. We have automatic emails for stakeholder
31 communication. Staff is working on a new system where people can access specific
32 updates versus a general notification. To date, automated signups have worked well.

33
34 Chair Levy said outside the AKWA if the producer was not doing non-lethal measures
35 the first kill would count and we would establish this as AKWA. If the producer was
36 already performing non-lethal measures and more than one depredation occurs wouldn't
37 this count too? Morgan said if the producer was already doing non-lethal measures
38 outside of the AKWA this would be counted towards chronic. If there is more than one
39 depredation outside the AKWA and the producer has been using non-lethal means this
40 would count too.

41
42 Anglin added that staff is moving very quickly on these depredations to address these
43 issues. He clarified that Attachment 3 is the Addendum to the 2010 Oregon Wolf
44 Conservation and Management Plan. He said if there is a difference between what is
45 written in the Wolf Plan, we will always defer to the newly adopted rule.

1 *Action: Commissioner Chair Levy moved to adopt the addendum and*
2 *amendments to OAR 635-110-0010 and 0020 as proposed by staff.*
3 *Commissioner Akenson seconded the motion and the motion carried unanimously*
4 *by a vote of six.*
5

6 **Exhibit C: DELEGATION OF AUTHORITY TO DIRECTOR TO APPOINT**
7 **COMMERCIAL FISHERY PERMIT BOARD MEMBERS**

8 Deanna Erickson, License Services Manager, said staff drafted a delegation of authority
9 to the Director that authorizes the Director to appoint Commercial Fishery Permit Board
10 (CFPB) members. She said three members of the current CFPB have excused
11 themselves from CFPB. This has left the CFPB without a quorum. There is currently a
12 Dungeness crab hearing pending and without a quorum, CFPB cannot issue a finding.
13

14 **Public Testimony:** There was no public testimony.
15

16 Commissioner Webber said currently the members representing limited entry fisheries
17 list the Columbia River Gillnet Salmon Fishing Industry. Does ODFW want to consider
18 changing the list to represent the current fishery title "Columbia River Commercial
19 Salmon fishing Industry"? Legal Counsel Erin Donald referred to ORS 508.755
20 Membership; duties; meetings; expenses and read, "(1) There is established within the
21 State Department of Fish and Wildlife the Commercial Fishery Permit Board. The board
22 shall consist of members appointed by the State Fish and Wildlife Commission as
23 follows: (a) Three members shall be chosen to represent the Columbia River gillnet
24 salmon fishing industry."
25

26 Director Elicker suggested taking this up at a future Legislative Session.
27

28 Commissioner Anderson asked if the Commission will still make decisions on non-
29 emergency situations; for instance, renewals and things not needing immediate action.
30

31 Director Elicker said under the current proposed delegation, because we wanted to
32 streamline the process, the entire power of appointment would go to the Director. If the
33 Commission would like, we could bifurcate this situation to the Commission to appoint
34 members of the CFPB on the usual process when their term expires, but allow a limited
35 delegation to the Director in situations like what we are facing when a quorum is needed.
36

37 Legal Counsel Donald suggested making a modification to the language in the current
38 delegation to, and looking at where in the delegation language can be inserted to make a
39 more limited delegation.
40

41 Director Elicker asked the Commission for clarity in what situations the Director can
42 move quickly on; like the current situation with a permit holder waiting and cannot move
43 forward without resolving this case.
44

45 Commissioner Anderson said these board positions are not without a lot of controversy.
46 In this situation a member of the Dungeness crab industry recused themselves and one
47 board member stepped down. There is a lot of money on the line with these approvals

1 and disapprovals. The role of the Commission is as an overseer in approving these
2 appointments like we do with other boards. This proposal is supposed to help protect the
3 Director and ODFW of any perception that could possibly come up that may be
4 considered controversial. She had no issue with giving the Director authority in cases like
5 this but it is the role of the Commission to provide general oversight when able.

6
7 Legal Counsel Donald addressed Commissioner Anderson's concern and said this
8 delegation does not delegate power to the Director to remove members from the CFPB;
9 that power remains with the Commission. She said legally the Director could appoint
10 someone to CFPB but the Commission still has the power and authority to remove that
11 person under the current language.

12
13 Vice Chair Finley said the Commission understands the issue. He agreed with
14 Commissioner Anderson. He supported approving the delegation before the
15 Commission in order to get the present situation on the way. He suggested that staff
16 have the language modified from Legal Counsel and then come back so the Commission
17 can amend it in August.

18
19 Director Elicker said staff will bring amended language to the Commission at the August
20 or September meeting, or even a little after, in order to address the quorum issue.

21
22 Commissioner Webber said if CFPB takes an action and grants or denies a permit, that
23 decision is valid without regard to whether we ultimately approve the appointment; so,
24 the fisherman isn't waiting for something to happen and not knowing what he can do.
25 Director Elicker said there is no further endorsement needed if I appoint someone for the
26 purpose of a quorum.

27
28 Commissioner Akenson lost connection on the phone line.

29
30 Commissioner Wolley asked if the Commission needed to address the amended rule at
31 the August meeting in the draft motion before it is read. Legal Counsel Donald said no, it
32 does not.

33
34 Commissioner Akenson reconnected on the phone line. She said she heard part of the
35 discussion but not all of it; for expediency, she abstained from voting and would let the
36 Commissioners who heard it all vote on it.

37
38 *Action: Commissioner Chair Levy moved to delegate authority to the Director to*
39 *appoint Commercial Fishery Permit Board members, as described in Attachment*
40 *2, and direct the Chair to sign the delegation on the Commission's behalf.*

41 *Commissioner Wolley seconded the motion and the motion carried unanimously*
42 *by a vote of five. Commissioner Akenson abstained from voting.*

43
44 **ADJOURN**

45 Chair Levy adjourned the public teleconference meeting at 11:20 a.m.