



Oregon Fish and Wildlife Commission Minutes

Meeting:
Friday, February 7, 2014 - 8:00 a.m.
Oregon Department of Fish and Wildlife
Commission Room
4034 Fairview Industrial Drive S.E.
Salem, Oregon 97302

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
Bob Webber, Commissioner	Curt Melcher, Deputy Director
Holly Akenson, Commissioner	Debbie Colbert, Deputy Director
Gregory J. Wolley, Commissioner	Steve Sanders, Assistant Attorney General
Laura Anderson, Commissioner	Teri Kucera, Executive Assistant

8 MEETING

9 On Friday, February 7, 2014, Chair Bobby Levy called the Oregon Fish and Wildlife
10 Commission (the Commission) meeting to order at 8:00 a.m. She said Vice Chair
11 Michael Finley was absent because he was away on business. The Commission is not
12 video streaming today due to technical difficulties. Director Roy Elicker will be here with
13 Commissioner Greg Wolley about 8:30 a.m. Commissioner Laura Anderson from
14 Newport is participating by phone today.
15

16 DIRECTOR'S REPORT

17 **Field Reports** were distributed in written form.
18

19 Expenditure and Budget Report

20 Deputy Director Curt Melcher said Debbie Colbert, Deputy Director for Administration,
21 was delayed in traffic in Albany due to the snowstorm. Chair Levy said we will defer this
22 item until Debbie's arrival.
23

24 Adopt Temporary Rules

25 Deputy Director Curt Melcher asked the Commission to ratify the four temporary rules all
26 related to fisheries and fishery management on the Columbia River. He noted the first
27 rule **635-023-0140 – Youngs Bay Recreational Fisheries Control Zone Established**
28 **in the Columbia River** is an agenda item for the Commission today. He said the
29 legislation requires that the Commission do this by February 1, 2014. In order to comply
30 with that statutory direction, we adopted a temporary rule that was effective on February
31 1, 2014 to insure that we have complied with the statutory requirement.
32

33 1. 635-023-0140

34 **Youngs Bay Recreational Fisheries Control Zone Established in the Columbia**
35 **River**

1 Adopted January 21, 2014: effective February 1, 2014 through July 30, 2014.
2 This temporary rule establishes a recreational fisheries control zone in the Youngs Bay
3 area of the lower Columbia River as directed by Senate Bill 830 (2013). SB 830 requires
4 establishment of the control zone by February 1, 2014. A permanent version of this rule
5 is proposed for adoption by the Oregon Fish and Wildlife Commission at its February 7,
6 2014 hearing. This temporary rule will be repealed upon filing of its permanent
7 counterpart.

8
9 **2. 635-023-0095**

10 **Columbia River Recreational Sturgeon Season in the Bonneville Pool**

11 Adopted January 29, 2014: effective February 1, 2014 through July 30, 2014.
12 This amended rule establishes a white sturgeon retention fishery in the Bonneville Pool
13 beginning February 1, 2014. Modifications are consistent with action taken January 29,
14 2014 by Columbia River Compact agencies of the states of Oregon and Washington.

15
16 **3. 635-041-0061 and 635-041-0065**

17 **Legal Size for White Sturgeon Landed in Bonneville Pool Treaty Fisheries Modified**

18 Adopted January 29, 2014: effective February 1, 2014 through July 30, 2014.
19 These amended rules change the fork length for white sturgeon which may be legally
20 retained in Treaty Tribe fisheries in the Columbia River between Bonneville Dam and
21 The Dalles Dam effective February 1, 2014. This modification changes the legal slot
22 length from 38 to 54 inches fork length to 43 to 54 inches fork length. White sturgeon of
23 legal size may be sold or kept for subsistence use. Modifications are consistent with
24 action taken January 29, 2014 by the Columbia River Compact agencies of the states of
25 Oregon and Washington in cooperation with the Columbia River Treaty Tribes.

26
27 **4. 635-042-0130**

28 **2014 Smelt Season Set for the Columbia River Mainstem below Bonneville Dam**

29 Adopted February 5, 2014: effective February 10, 2014 through March 31, 2014.
30 Amended rule sets a 2014 commercial fishing season for smelt in the Columbia River
31 below Bonneville Dam. The fishery consists of seven-hour fishing periods, 7:00 a.m. to
32 2:00 p.m., Mondays and Thursdays of each week beginning February 10 through March
33 6, 2014. Revisions are consistent with the action taken February 5, 2014 by the
34 Columbia River Compact agencies of Oregon and Washington.

35
36 *Action: Commissioner Webber moved to adopt the temporary rules set out in*
37 *agenda numbers 1 through 4. Commissioner Akenson seconded the motion*

38
39 Legal Counsel Steve Sanders clarified that for rule 1 (OAR 635-023-0140) the
40 Commission will be considering, presumably if you adopt a different rule we would then
41 substitute the rule that you adopt as a permanent rule in place of this one.

42
43 *The motion carried unanimously by a vote of four ayes from Commissioners*
44 *Webber, Akenson, Anderson, and Chair Levy.*

1 **PUBLIC FORUM**

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

5
6 Chair Levy noted that today one person asked to speak under Public Forum.

7

<p>Jody Mather Astoria, Oregon</p>	<p>Jody Mather said he spoke on behalf of the Lower Columbia River sturgeon fishermen and that this issue was brought up last month by Bob Reis asking to change the rule. He would like to see a sturgeon retention season again on a very limited basis. Last month he sent in written testimony that showed there are 131,700 keepers available. The seine nets studies and creel checks also showed there were a lot of fish. He said 40,000 fish were harvested in 2008 but it was down to 7,000 last year. He asked to work with the biologists to come up with a plan and then monitor it closely to keep this fishery a true trophy fishery. He said if we close the fishery people will lose sight of it and its importance. The economy in the Lower Columbia River small communities will suffer greatly. He will lose 50% of his annual income. After last year's smelt run everything is back to normal and these numbers are increasing. He said taking 7% to 10% of the 131,700 with all the present numbers would be very viable.</p> <p>Mather said the huge June Chinook runs in 2015 and 2016 from the hatcheries upriver will take more focus off of the sturgeon; it will be a very popular fishery. With our conservative harvesting we will never have to close it. He suggested lowering the limit to make it a true trophy fishery as long as it is good for the fishery and make it a one fish annual limit. Even with sea lion predation everything is balancing out. He said a couple of organizations are pushing to close it because the commercial fishermen will also get a fishery if the sports fishermen do, and they don't want to see that happen. We should look at the numbers and have a very limited consumptive fishery.</p>
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8
9 **Exhibit A: COMMISSION MINUTES**

10 Chair Levy asked for a motion to approve the draft December 6, 2013 minutes.

11
12 *Action: Commissioner Webber moved to approve the minutes for the December 6,*
13 *2013 Commission meeting. Commissioner Akenson seconded the motion and*
14 *the motion carried unanimously by a vote of four.*

15

1 **Expenditure and Budget Report**

2 Debbie Colbert, Deputy Director for Administration, referred to her Financial Report. As
3 of December 31, 2013, Department-wide, revenues and expenditures are within
4 budgeted projections for the biennium. She said this is the last biennium of the
5 Department's fee increase. For several months staff has talked about aggressively
6 managing expenditures and pursuing revenues from federal grants and contracts. We
7 are not only under some administrative restrictions for hiring and non-critical expenditure,
8 but also starting to make reductions in contract services, administration, and Oregon
9 State Police (OSP) enforcement.

10
11 Commissioner Webber asked if the agency is doing any better getting the money from
12 the feds in a timelier manner. Deputy Director Colbert said overall we are doing better.
13 We developed a new billing system that went live in August. We can produce invoices
14 quicker which expedite approval on the federal side. We still have some particular
15 federal agencies that are very slow to pay. For instance, with the NOAA Mitchell Act we
16 do not get a contract until eight or nine months into the work, which means we cannot
17 invoice them until we have nine months of expense that we covered. We are working to
18 change that and escalate that within those organizations.

19
20 Commissioner Wolley and Director Roy Elicker arrived at the meeting at 8:19 a.m.

21
22 Chair Levy said the presentation for Exhibit B and Exhibit C will be combined but the
23 Commission will vote on Exhibit B and Exhibit C separately.

24
25 **Exhibit B: WARMSPRINGS DAM HYDROELECTRIC PROJECT FISH SCREENING**
26 **EXEMPTION AND FISH PASSAGE WAIVER**

27 Rick Kepler, Water Quality and Quantity Program Manager, said last month there were
28 discussions about whether the policy was correct. Staff met with the proponents of those
29 projects and modified some of those agreements. He said the Department had public
30 comments that were submitted late but all are before the Commission today: the Native
31 Fish Society; proponents for Warm Springs Dam; and a letter from the Burns Paiute Tribe.

32
33 Greg Apke, Statewide Fish Passage Program Coordinator, during a slide presentation
34 said the two projects presented last month both seek a Fish Screening Exemption and a
35 Fish Passage waiver request. It is a policy of the state to prevent appreciable damage to
36 game fish populations when waters of the state are diverted. This is typically
37 accomplished through the project specific installation of a screening or fish bypass
38 device. Consistent with this mandate, project proponents may seek screening
39 alternatives from the Commission with your approval. Screening exemptions are
40 contingent on the project proponent providing adequate provisions to protect game fish
41 in the body of water from which water is being diverted.

42
43 Apke said the state's Fish Passage policy requires passage at artificial obstructions,
44 diversions, or dams when there are certain trigger events that occur on the landscape.
45 The events that invoke our Department's authority for fish passage range from new
46 construction of dams, water diversion facilities, a fundamental change in permit status;
47 one of the reasons these projects are in front of the Commission today. Other activities

1 that trigger fish passage include major maintenance or abandonment of artificial
2 obstructions.

3
4 Apke said the Oregon Revised Statutes adopted in 2001 allow for alternatives beyond
5 providing passage at the obstruction. These alternative are limited and include a fish
6 passage exemption; completely different and separate from a fish screening exception
7 and/or a fish passage waiver. Fish passage exemptions are appropriate when there is
8 no appreciable benefit to providing passage at the given passage barrier. Exemptions
9 can also be granted when the Commission finds the lack of passage has been previously
10 mitigated, or has previously been granted a fish passage waiver for the artificial
11 obstruction.

12
13 Legal Counsel Steve Sanders said before Oregon became a state in the Territorial
14 Constitution there was a requirement to have fish passage at every barrier that
15 obstructed salmon passage in the state of Oregon. That has been the law in Oregon
16 since statehood. But in the 1950's for reasons we were not able to discover the Fish
17 Commission relaxed its insistence on passage at all of these barriers. He said since that
18 time a number of barriers were built without the legally required passage. In about 2000,
19 Fish Passage Coordinator Roy Elicker realized that we and Washington were about to
20 be sued for a violation of the Fish Passage statute. As part of the Fish Passage Task
21 Force, Oregon came up with the system you see here that allows the Commission to
22 grant waivers or exceptions. Washington did not and was sued. They are currently under
23 a federal court order to fix all of their back passage blockages; whereas, the proponents
24 of that lawsuit realized that at least Oregon was trying to do something to bring these
25 passages into compliance with the law.

26
27 Legal Counsel Sanders said what the Legislature did not allow the Commission to do
28 however was return the area to its historical or pristine condition. You have to consider
29 the conditions as they are. The second point related to these exemptions, we were told
30 during the legislative process that the Department had in good faith granted project
31 proponents exemptions prior to, even though the law might not technically of allowed
32 that, and as a political compromise, the Department would be required to recognize
33 those as valid if a project proponent could show a valid agreement with the Department
34 to show that they had adequately taken care of passage or mitigated for it.

35
36 Legal Counsel Sanders said from the 1950's most of the mitigation from that time was
37 considered to be hatcheries; if a proponent would put in a hatchery we would probably
38 consider that good. Now the Commission's policy has changed. He said what we are left
39 with are the exemptions which are only intended to recognize those situations where the
40 Department in good faith tried to make an agreement with the proponent for mitigation.

41
42 Legal Counsel Sanders said that does not apply to either of these situations at Mason
43 and Warm Springs Dams. The tools that the Commission has left are only waivers. The
44 Commission determines that you are getting adequate mitigation or to require passage
45 at the facility, and not really the exemption is this case. He said while I appreciate that
46 the Burns Paiute Tribe would like to have the Commission grant both an exemption and
47 waiver then add some conditions that are not really a legal tool that the Legislature gave

1 to us. To accomplish this, similar as the staff has done, by including in essence a
2 reopener provision in both of these Agreements so that if the federal government orders
3 passage, then in essence your agreement would also be reopened to require passage.
4 He said that is the full legal extent of what you get as a reopener and that has been
5 negotiated into this.

6
7 Legal Counsel Sanders said whether you believe you are getting adequate mitigation,
8 although it sounds kind of scientific it is really a policy call because neither the scientists
9 or the lawyers are able to adequately in some type of objective criteria tell you whether
10 you are getting an adequate balance here. He said that is why the Commission's
11 determination here is really one for you to determine about whether you think you are
12 getting enough mitigation. If you do not think you are getting enough mitigation then you
13 can direct the staff to go back and negotiate for some more or try to. If the staff and the
14 project proponents come up with an agreement, we would bring that back to you.

15
16 Legal Counsel Sanders said you do have a lot of policy authority here and although it
17 really sounds kind of like a fact based determination it is more a political determination
18 about whether you think you are satisfying the state policy to protect native fish in the
19 mitigation package that we have negotiated for you.

20
21 Apke said the Department concludes that the mitigation proposed by the project
22 proponents in lieu of providing passage at both the Mason Dam and Warm Springs Dam
23 does provide a benefit greater than the benefit at each of those facilities had passages
24 been installed. For staff, this is the litmus test looking at conditions at the time of the
25 action or the trigger event, in this case it is the Federal Energy Regulatory Commission
26 (FERC) license and the water right application that trigger passage authority. We look at
27 the conditions at the time of the trigger event and at both of these facilities these
28 conditions are quite degraded. We are sympathetic to additional mitigation but we are
29 bound by the constraints of our rules and regulations.

30
31 Apke responded to five questions left from the Commission's January 10, 2014 meeting.

- 32
33 1. *Can fish passage waivers include a reopener provision?* Apke said Legal
34 Counsel Sanders just summarized that well. Staff went back to the bargaining
35 table with the Warm Springs Irrigation District (WID) and Baker County
36 representing the Mason Dam project. The project proponents were copasetic with
37 us in posing the additional provisions that Counselor Sanders outlined. Staff feels
38 they have done what they can on this piece.
39
40 2. *Need to better identify who is responsible for funding the maintenance or*
41 *modification of the mitigation.* Apke said not only for the mitigation but also the
42 long term stewardship, monitoring, and reporting of those mitigation activities.
43 This is consistent with our Fish Passage policy. It puts the onus of the financial
44 responsibility on the owner/operator; the applicant for each project. We have
45 clearly identified that in our agreements for each project for both the screening
46 and passage component. The project proponents fully understand those
47 responsibilities.

- 1
2 3. *Can a fish passage exemption be granted rather than a fish passage waiver?*
3 Apke said no. The applicants did not seek a fish passage exemption but a fish
4 passage waiver and that is what staff analyzed. Staff concluded there are site
5 specific benefits if passage were provided at each facility. That precludes the
6 exemption option for the applicant up front. We recognize the conditions are
7 degraded but for certain species there would be benefits at both of those facilities
8 had a fishway or fish ladder been constructed.
9
- 10 4. *Do the fish passage mitigation proposals for each project provide a net benefit to*
11 *native migratory fish?* Apke said yes. Looking at conditions at the time of the
12 trigger event is vital to our analysis. The equation is a plus one equation. If you
13 can produce one more native migratory fish beyond what would be produced by
14 providing passage at an artificial obstruction(s) then you have equated to a net
15 benefit.
16
- 17 5. *Can the Commission treat these hydroelectric retrofits projects differently from*
18 *other passage projects?* Apke said no. Our statutes require us to treat all projects
19 similar; we cannot treat these projects independently. Statutes do not allow the
20 Commission to treat hydroelectric retrofits differently than other projects.
21

22 Commissioner Webber said in either the Warm Springs or on the Powder River have they
23 been granted prior waivers or they were ignored back in the day? Apke said we do not
24 have any record of them seeking or the Department granting a passage waiver at either
25 dam. As Legal Counsel advised there are thousands of artificial obstructions across the
26 landscape in the state. These two dams were built in the early 1900's without passage.
27 The time to address passage is when passage triggers events are planned. The
28 hydroelectric proposals at each dam trigger the requirement to address passage. They
29 had more than a century of legacy affects at both of these dams.
30

31 Apke gave a broad overview of the Warm Springs Dam Hydroelectric project (see slide
32 11, page 6). He said it is jointly owned by the Warm Springs Irrigation District (WID) and
33 the U.S. Bureau of Reclamation. The WID plans to retrofit a turbine into the civil-works
34 of the dam and produce power. The dam is located on the mainstem Malheur River and
35 the project will not change operation of the dam. The dam's primary purpose is for
36 irrigation and flood control. There is no instream water right and no downstream flow
37 during the storage period from October to April. The Malheur River typically runs dry
38 down to the confluence with the South Fork. Because of these existing conditions the
39 biological conditions are quite degraded. Apke said for this project the only native
40 migratory fish we can take into consideration for the net benefit are suckers and pike
41 minnow species.
42

43 Apke said for the Screening Exemption Proposal that WID had proposed to provide
44 funds to replace game fish lost due to the lack of a fish screen at the dam. In lieu of the
45 screen the project will provide resources for the Oregon Fish and Wildlife Warm Springs
46 Reservoir Stocking Program to replace lost game fish that mostly likely will become

1 entrained due to lack of screening. He said staff does recommend that the proposal is
2 adequate to protect game fish in the Warm Springs Reservoir.

3
4 He said for the Fish Passage Waiver proposal and in lieu of passage at the Warm Springs
5 Dam the WID will be replacing an existing pushup dam as presented during the January
6 Commission meeting. He said a pushup dam (see slide 14, page 7) is permissible by
7 Oregon law and it diverts water from the river into an irrigation facility. Project
8 proponents have worked with the Department and they will:

- 9 • Replace pushup dam facility with a permanent rock wing dam diversion structure.
- 10 • Install head gate to help regulate water going into the diversion system and will
11 keep fish in the river versus down the canal.
- 12 • Provide passage during irrigation season; fish will bypass around the rock wing
13 diversion and have passage when there is adequate water in the river.
- 14 • Maintenance of the new wing dam and headgate facility during hydro project's life.

15
16 Apke said after comparing the benefits of passage at Warm Springs Dam to the benefits
17 of the proposal (see slide 15, page 8), staff determined that the mitigation proposal will:

- 18 • Benefit conditions for all native migratory fish present at the dam: sucker and pike
19 minnow.
- 20 • Improve passage and accessibility within a high quality habitat; whereas, the
21 habitat in the vicinity of the dam is poor and potential benefits to providing
22 passage are quite limited.
- 23 • Increase productivity of native migratory fish; whereas, passage at the dam would
24 only marginally improve productivity due to the poor habitat conditions in the
25 already occupied habitats of those species tolerant to those conditions.
- 26 • Increase bull trout distribution and abundance by improving passage. Bull trout
27 are a threatened species so these actions are consistent with recovery efforts.
28 Bull trout presently do not use the habitats at the dam itself.

29
30 Staff concludes the proposed passage mitigation measures, in lieu of providing passage
31 at the dam, will provide a net benefit for native migratory fish greater than that provided
32 at Warm Springs Dam. Staff recommends the Commission approve both the fish
33 screening exemption and the fish passage waiver.

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

36
37 *Action: Commissioner Akenson moved to approve an exception to the*
38 *Warm Springs Irrigation District from providing fish screening at the Warm Springs*
39 *Hydroelectric Project in exchange for implementing the measures described in the*
40 *agreement and authorize the Chair of the Commission to enter into an agreement*
41 *with Warm Springs Irrigation District to this effect; the effective date would be the*
42 *date of the last signature by the Chair of the Oregon Fish and Wildlife*
43 *Commission and the District Manager of the Warm Springs Irrigation District.*
44 *Commissioner Wolley seconded the motion and the motion carried unanimously*
45 *by a vote of five.*
46

1 *Action: Commissioner Akenson moved to approve a waiver to the Warm Springs*
2 *Irrigation District from providing fish passage at Warm Springs Dam in exchange*
3 *for implementing the mitigation measures described in its application and*
4 *authorize the Chair of the Commission to enter into an agreement with*
5 *Warm Springs Irrigation District to this effect; the effective date would be the date*
6 *of the last signature by the Chair of the Oregon Fish and Wildlife Commission and*
7 *the District Manager of the Warm Springs Irrigation District. Commissioner*
8 *Webber seconded the motion and the motion carried unanimously by a vote of*
9 *five.*

10
11 **Exhibit C: MASON DAM HYDROELECTRIC PROJECT FISH SCREENING**
12 **EXEMPTION AND FISH PASSAGE WAIVER**

13 Greg Apke, Statewide Fish Passage Program Coordinator, said Baker County proposes
14 to retrofit the existing Mason Dam with a hydroelectric turbine to utilize existing irrigation
15 and flood controls to produce energy. The dam is located on the mainstem Powder River
16 in Baker County and forms Phillips Reservoir. It is owned by the Bureau of Reclamation
17 and used primarily for flood control and irrigation. Outside of the irrigation flood control
18 season there is a minimum 10 cubic feet per second (cfs) instream flow requirement so
19 there are flows downstream of the dam during the irrigation season and during the fill
20 time of the reservoir. He said this project will not change the operation of the facility.

21
22 Apke said at this facility native migratory fish species include suckers, pike minnow, and
23 redband trout. He noted that these species are less tolerant to poor water quality
24 conditions and that they are present in the river above and below the dam as well as the
25 reservoir immediately above the dam. He noted that these populations are presently
26 considered self-sustaining. Mountain whitefish are not presently in this system and have
27 not been detected in the Powder River for many years. Bull trout are less tolerant to
28 higher water temperatures and poor water quality and are only present upstream within
29 Silver and Cracker Creek tributaries. Phillips Reservoir is managed by the Department
30 for recreational fishery and annually stocks rainbow trout. Staff has had many issues
31 with overly abundant yellow perch. The lake is inhospitable to rainbow trout and redband
32 trout. Apke said there is no known natural production out of the reservoir presently for
33 native fish. There are warmwater fish in the reservoir that are naturally producing.

34
35 Apke said the Mason Dam is a complete fish passage barrier in the Powder River basin.
36 Downstream the river is heavily diverted for irrigation purposes leaving poor fish habitat
37 and poor water quality including high water temperatures and low oxygen levels (see
38 slide 18, page 9). Presently there are no anadromous fish at the Mason Dam due to
39 other fish passage barriers downstream. Upstream of the dam the Phillips Reservoir is
40 surrounded by national forest property. The valley upstream of the reservoir has been
41 heavily mined for gold in the past century and the channel is quite degraded. The
42 Powder River is also impacted by irrigation and land management practices.

43
44 Apke said based on current conditions redband trout, suckers, and pike minnow are the
45 only native migratory fish that reside proximal to the project. These native migratory fish
46 would benefit by providing passage at the facility. We believe there would be a benefit to
47 these fish if passage were provided; therefore, the passage exemption option is

1 precluded because there would be benefits. Because of these conditions staff believes
2 the mitigation would generate an appreciable benefit.

3
4 For the Screening Exemption Proposal, Apke said the project proponents will provide:

- 5 • Funds to replace game fish lost due to lack of fish screens at the dam.
- 6 • Fund and install a screen at the Shaw-Stewart Diversion ~ nine miles
7 downstream of the Mason Dam
- 8 • Provide funds for a Powder River Screening fund that will allow a collaborative
9 effort to focus on other priority unscreened diversions in the Powder River Basin.

10
11 Apke said the Fish Screening Task Force and staff recommend that the proposal for
12 mitigation in lieu of screening at the dam is adequate to protect game fish in Phillips
13 Reservoir.

14
15 For the Fish Passage Waiver Proposal, Baker County has proposed to fix two culverts
16 upstream of Phillips Reservoir. Silver Creek Culvert will be replaced with a fish passage
17 compliant culvert. McCully Fork Culvert project will improve passage by implementing a
18 roughened-channel design below the culvert to rebuild the channel and backwater the
19 stream into and through the culvert. These two projects will improve access to habitat for
20 11 miles.

21
22 Apke said staff has determined that the mitigation alternatives will provide benefits to all
23 native migratory fish greater than had passage been provided at Mason Dam. This
24 mitigation will additionally provide benefits to bull trout by improving access to critical
25 habitat in Silver Creek which has the potential to increase genetic diversity in the
26 expression of those fishes' fluvial life history. Staff recommends that these mitigation
27 actions effectively mitigate the lack of providing passage at Mason Dam.

28
29 Apke said staff recommends that the Commission approve both the fish screening
30 exemption and the fish passage waiver request for Mason Dam.

31
32 **Public Testimony:**

Jason Dungan Dallas, Oregon	Jason Dungan expressed concerns about the mitigation proposals for the Mason Dam proposal: <ol style="list-style-type: none">1. McCully Fork passage. He has not seen any suckers or pike minnows in there. Is that at the upper range of their habitat; the high in the system?2. Not sure if the Silver Creek or McCully Fork passage are complete barriers. With Silver Creek he has no experience other than the pictures he has seen of it. Dungan said McCully Fork would be a total barrier to the fish. His main purpose for testifying today is he is not sure if that is enough mitigation for waiving fish passage at Mason Dam or that it will benefit the pike minnow and the suckers.
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33
34 Chair Levy asked Apke to address Jason Dungan's question to the Commission.

1
2 Apke referred to the pictures of the existing McCully Fork and Silver Creek culverts (see
3 slide 20, page 10) and said he has visited both culverts. The McCully culvert is a
4 complete barrier. For culverts like this on smaller streams there is some high flows (flood
5 flows) where the McCully Fork culvert may in fact get backwatered and provide
6 opportunities for fish to move upstream against the flow. There may be a day or two at
7 just the right conditions where fish could get up through the existing culvert but during
8 the bulk of the fish passage migratory flows, the time of year when fish need to move
9 upstream, that culvert is in fact a barrier.

10
11 Apke said the Silver Creek culvert has an 8-inch jump from the stream into the culvert.
12 The severely degrade culvert was installed probably in the 1940's. He said what Jason
13 can't see is inside the culvert bottom is rusted out. About three-quarters of the way
14 upstream there is a hole in that culvert. At low flows not only do fish have a problem
15 getting into the culvert because of limited water depths the jump height exceeds juvenile
16 jumping criteria. Apke has not seen this culvert at a higher flow but in his 22-years of
17 experience this culvert would pose very challenging passage conditions. There will be
18 marked increases by replacing the Silver Creek culvert with a compliant fish passage
19 structure.

20
21 He said even more so with the McCully Fork culvert which is in very good condition. It is
22 co-owned by the Oregon Department of Transportation and Baker County. It is a
23 reinforced concrete box culvert. To replace the culvert with a bridge is probably ~ \$1.5
24 million to \$2 million dollars. The solution at McCully Fork is not perfect; they are
25 rebuilding the stream channel which has degraded through time. Baker County is
26 proposing to rebuild the stream channel so fish can get up into the culvert without having
27 to jump. Staff is working with project proponents on a design that will improve passage
28 at McCully Fork and is consistent with fish passage design criteria.

29
30 Chair Levy asked what the cost is to replace the culvert at Silver Creek. Apke guessed it
31 would be \$20,000 to \$30,000 dollars. He said the County is proposing to design and do
32 the work themselves versus contract the work out. The culvert itself is not very expensive
33 to replace, it's the fill above the culvert that gets expensive to remove and replace. There
34 is limited fill about Silver Creek so he guesses a low of \$12,000 to \$13,000 and upward
35 of \$20,000.

36
37 *Action: Commissioner Wolley moved to approve an exemption to Baker County*
38 *from providing fish screening at the Mason Dam Hydroelectric Project in*
39 *exchange for implementing the measures described in the agreement and*
40 *authorize the Chair of the Commission to enter into an agreement with Baker*
41 *County to this effect. The effective date would be the date of the last signature by*
42 *the Chair of the Oregon Fish and Wildlife Commission and the Chair of the Baker*
43 *County Commission. Commissioner Webber seconded the motion and the*
44 *motion carried unanimously by a vote of five.*

45
46 *Action: Commissioner Wolley moved to approve the waiver to Baker County from*
47 *providing fish passage at Mason Dam in exchange for implementing the mitigation*

1 *measures described by Baker County in its application and authorize the Chair of*
2 *the Commission to enter into an agreement with Baker County to this effect; the*
3 *effective date would be the date of the last signature by the Chair of the Oregon*
4 *Fish and Wildlife Commission and the Chair of the Baker County Commission.*
5 *Commissioner Akenson seconded the motion and the motion carried unanimously*
6 *by a vote of five.*
7

8 **Exhibit D: YOUNGS BAY CONTROL ZONE**

9 Chris Kern, Acting Fish Division Deputy Administrator, said staff is here to discuss a
10 proposal for consideration for the recreational fishing control zone at the mouth of
11 Youngs Bay. The boundaries in the (Commission) packet proposed so far are the same
12 boundary that the Commission saw in December 2012, the last time this specific issue
13 came before the Commission. Kern said Senate Bill 830 (SB 830) does not specify
14 exactly the location or time and area of that closure but it does specify a closure needs to
15 occur. Staff believes the proposal in front of the Commission meets the intent of that
16 legislation by focusing on an area where there is notable effort targeting fish heading
17 back to the bay there. Kern outlined his presentation with John North today:

- 18 • Workgroup recommendations when the reform process was underway regarding
19 the control zones and what the Legislature subsequently said.
- 20 • Process on how staff derived the proposal in front of the Commission; specifically,
21 why we are talking about Youngs Bay.
- 22 • When the closure might be the most appropriate based on staff's assessment of
23 the risk of those interceptions throughout the year.
- 24 • What our recreational and commercial fishery advisors have said about this topic.
- 25 • The proposal itself.

26
27 During a slide presentation Kern provided background:

- 28 • Ed Bowles, Fish Division Administrator, and Tony Nigro, Ocean Salmon and
29 Columbia River Program Manager, gave first report on this issue to the
30 Commission last month.
- 31 • Proposal today is the outcome of a yearlong process to implement those reforms
32 presented by Bowles and Nigro to the Commission in January.
- 33 • Process was initiated by the Governor's request to the Commission. Assisted by
34 recommendations developed by the Joint Oregon/Washington Workgroup (the
35 Workgroup) in November 2012.
- 36 • Culminated in rulemaking by the Commission in December 2012 and June 2013.
- 37 • SB 830 passed during the 2013 Legislative Session.

38
39 Kern discussed the Workgroup process. He said the recommendation did not specifically
40 identify Youngs Bay but called for an overall evaluation of the feasibility of recreational
41 fishing control zones at the mouth of these off-channel areas. The recommendation was
42 made to address concerns by commercial fishery representatives that by enhancing
43 recreational fisheries in the mainstem, the managers may also reduce the numbers of
44 fish escaping to those off-channel areas where commercial fisheries will be restricted to
45 in the long term. The fishers proposed those control zones as a way to reduce
46 interceptions in outside fisheries.

1
2 Kern said the commercial fishers' concerns expressed during that Workgroup process
3 were also topic of conversations last Legislative Session resulting in specific language in
4 SB 830 related to the establishment of a control zone at Youngs Bay. The legislation
5 does not specifically indicate exactly what that zone should look like or when it should be
6 in place. It does define explicitly that the purpose of the zone is to reduce the
7 interception of hatchery fish headed for Youngs Bay. SB 830 also calls for an evaluation
8 of that exclusion area at least once every three years and provides opportunity for the
9 Commission to remove it up to including removal of the zone if it is decided that it is not
10 necessary to meet the overall objectives (see slide 5, page 3).

11
12 John North, Columbia River Fisheries Manager, said the Legislature's focus on Youngs
13 Bay reflects the importance to the industry of this fishing site because it is the most
14 significant Select Area (SA) site with the highest commercial participation. Juvenile fish
15 number about 6.5 million released out of the Youngs Bay drainage resulting in the
16 largest SA commercial harvest. On average about 65% of the SA Chinook and about
17 55% of the SA coho are landed in Youngs Bay (see slide 6, page 3).

18
19 North said the intent of the control zone is to reduce the interception of salmon destined
20 for Youngs Bay. The risk is extremely low in the winter and the spring because very little
21 fishing effort occurs adjacent to or downstream from Youngs Bay during this timeframe.
22 Aside from ocean fisheries the risk in the summer is basically non-existent because the
23 Columbia River is closed to salmon fishing downstream from the Astoria-Megler Bridge
24 during mid-June through July (see slide 7, page 4).

25
26 He said the risk of interception is much higher in the fall with the start of the popular
27 Buoy 10 fishery: Select Area Bright (SAB) fall Chinook, tule Chinook, and coho destined
28 for Youngs Bay are caught throughout the Buoy 10 area during August and September.
29 The area adjacent to the mouth of Youngs Bay is a popular recreational fishing spot
30 especially early in the season when anglers concentrate here to target early returning
31 SAB fall Chinook before the larger runs of the upriver bound Chinook begin to build in
32 the estuary. The area at the mouth of Youngs Bay is preferred by some anglers
33 because it is fairly close to a couple of boat ramps and, under some circumstances, can
34 be calmer than other parts of the river (see slide 8, page 4).

35
36 North said the proposed Youngs Bay Control Zone was discussed at Columbia River
37 advisory group meetings. The Columbia River Commercial Fishery Advisory Group
38 generally supported the proposed control zone during the spring and the fall, and
39 supported an area similar to but slightly larger than the staff proposal. They questioned
40 why sport closures were not being considered adjacent to other SA sites. He said most
41 members of the Columbia River Recreational Fisheries Advisory Group felt the closure
42 was unnecessary but if needed, it should be of a smaller size or shorter duration (see
43 slide 9, page 5).

44
45 North said as written the staff proposal would prohibit angling for all fish species
46 including catch-and-release within the control zone but would not affect most crabbing
47 activities which are minor in this area. The recommended timeframe for the closure is

1 August 1 through September 15 annually, because this is when the highest interception
2 of salmon destined for Youngs Bay would occur (see slide 10, page 5).

3
4 North said the location of the proposed recreational fishing area would extend from the
5 current commercial fishing boundary. Pointing to Slide 11 – Proposed Youngs Bay
6 Control Zone (see page 6), North said the lower commercial fishing boundary is located
7 at the Hwy. 101 Bridge, and extends upriver. The proposed control zone would extend
8 north of Hwy. 101 Bridge out to a line that runs from the Warrenton Fiber Mill (which
9 most anglers refer to as the “sawdust pile”) and running up the green buoy line through
10 Green Can (GC) 29, GC 31, GC 33, and GC 35A and then connecting with the Astoria-
11 Megler Bridge; specifically, the abutment. Then it runs southerly in line with the Bridge to
12 the Oregon shore at Astoria.

13
14 North said if the Commission does consider the staff proposal there is one minor wording
15 modification that enforcement has requested. The correction to the wording would be so
16 that when the rules reference the abutment at the Megler Bridge, enforcement would
17 prefer that it references “the center of the abutment.” So, specifically in the rule (see
18 Attachment 3 – Draft Oregon Administrative Rules), in Section 2, (a), line 9,
19 “...northeasterly through green navigation buoys 29, 31, 33, and 35A to the Astoria-
20 Megler Bridge...”, staff would like to insert “**center of the**” so it would read, “...and 35A to
21 the **center of the** Astoria-Megler Bridge abutment...”

22
23 North referred to Slide 12 – What does Staff Recommend and said it helps shows the
24 location of the proposed Youngs Bay Control Zone in relation to the entire Buoy 10 area
25 which runs from the Buoy 10 line to the west near the mouth of the Columbia River, east
26 to what we call the Tongue Point Rocky Point line, which marks the separation between
27 the Buoy 10 fishery and the mainstem recreational fishery. He said the green buoy line
28 which is the northern part of staff’s proposed control zone is something that fishermen
29 refer to and it also uses two bridges in the boundaries, all of which are easily enforced
30 and the boundaries are supported by Oregon State Police (OSP). The proposed control
31 zone will close a popular fishing spot when Youngs Bay fish are present. Therefore it
32 should help reduce interception of Youngs Bay fish as intended by the statute.

33
34 **Public Testimony:**

Jerry Dove Tillamook, Oregon	Jerry Dove, President and Founder of Tillamook Anglers Corporation, said he has been involved in fish-related activities for over 30 years. They run the Whiskey Creek all volunteer salmon hatchery in Tillamook. He moved to Tillamook in 1976 because he had five rivers he could fish that flow into Tillamook Bay. They have lost the Tillamook River and the Miami River. If the new coastal conservation plan goes through next year we will lose the Kilchis and half of the Wilson river. He said now we’re being asked to give up the mouth of Youngs Bay where I and thousands of others have fished for years. Dove said friend Loren Parks has spent millions of dollars to
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	<p>enhance fish and fishing in Oregon:</p> <ul style="list-style-type: none"> • Purchased property on many rivers so the public would have a place to fish. • Paid for boat launches and supported fish hatcheries. • Supports both high schools in Warrenton and Astoria with their fish hatcheries. • Purchased property in Astoria where no less than 100 folks stay during the Buoy 10 fishery with most of them fishing the mouth of Youngs Bay. • Oregon Sunflow Corridor the very large fish enhancement project hopefully is going to happen in Tillamook. Parks has invested a quarter of a million in that and we are in the process of asking him to spend another \$4.3 million. Dove said we discussed Youngs Bay with Parks two nights ago. Thinking about the \$4.3 million his comment was, “Are you crazy? Why should I keep investing money when they keep taking away fishing opportunities?” <p>Dove said he emailed the Commission to voice his concerns about the safety for small craft at Youngs Bay. If we are forced to go out to the center line when the wind comes up we are going to have some fatalities. We would ask that you cut the size of this bubble back as far as you possibly can and please stop taking away our fishing opportunities.</p>
<p>Lon Sweeney Sandy, Oregon</p>	<p>Lon Sweeney is from Sandy but has a place on the Skipanon River where he moors his boat. He takes exception to the staff’s idea that SB 830 does not tell them where to put the line. SB 830 says the zone shall be at the mouth of Youngs Bay. He said “shall” is a mandatory, non-functional word. He said “at” is very specific. It’s not next to, not adjacent and it is not near about, it is “at”.</p> <p>To figure out where Youngs Bay was he looked it up and found the Youngs Bay Watershed, a report that ODFW was involved with. He also found the State Marine Board’s description of Youngs Bay, and a congressional record where the mouth of Youngs Bay is - between the Skipanon Peninsula and Smith Point. He sent the Commission literature on this with the exact latitudes and longitudes.</p> <p>Legislative intent. Sweeney called Senator Fred Girod’s office, the chief sponsor of SB 830 who carried it through the Senate. The Senator said he was more than surprised that they had put the proposed boundary out that far; he had talked to other legislators and they were also surprised that it</p>

	<p>was out that far and it was not the legislative intent to put that boundary out there. Sweeney talked to John North and part of the reason was that was where the commercial fishery originally wanted it. There was the idea that OSP wanted it there. He spent 30 years in law enforcement. He said we should not put that line there just to please OSP. We did our jobs based on what the requirements of the job were.</p> <p>He said the green line is very misleading. From the green line to Buoy 33, that is two-fifths of a mile and you are on top of Desdemona Sands. They troll fish back and forth there. There is no way that people can fish that way on that side of that line. When it gets to low tide there is nothing there but sand; they put the green buoys there to keep the big ships on the other side of the line and out of the sand.</p> <p>Sweeney said when they talked about fish going back up to the bay it said it could affect the fish, not that it will. There is no scientific proof that any of this is going to do anything. It is basically a political solution to a scientific problem. Lastly part of this actually violates Article 1, Section 20 of the Oregon Constitution. You cannot pass a law that protects one group or individuals and leaves out the rest of us.</p>
<p>Jody Mather Astoria, Oregon</p>	<p>Jody Mather said before that fishery should be closed the Commission should go out there one time during the season and delay this one year and look at the number of small boats there. The small boats that utilize this fishery in the evenings and after work with the locals and everybody else is quite large. Closing that down will essentially close fall fishing for some people. It is very hard to swallow losing another fishery. He feels for the commercial fishery, they got a raw deal through this whole thing.</p> <p>Mather does not agree with SB 830 and what is proposed. It is terrible and he does not think this is the solution. They are fighting for anything they can get right now. He said sure they will get more fish if this is closed but that is a very popular early season fishery that gets utilized immensely by the sport and guide fleets. He is not so concerned about that as much as the small boat fishery. A guy gets off work after working all day and wants to launch his boat in the Skipanon. When the northwest wind kicks up in the afternoon that is protected enough for a 15-foot boat to troll spinners in the bay. He said the way the program has worked for years there has been no rules but we haven't gone up into Youngs Bay and fished around the net pens</p>

	<p>and we haven't trolled there with spinners. We could have and we would have done very well, but we stayed away and worked together cohesively.</p> <p>Mather said if this passes it will create more animosity between the user groups, commercial and sport, and we don't need that. We have to do something because the SB requires it. Straight across Youngs Bay from the tip of the Skipanon where it comes out straight over across is perfect for the sports fishermen. It will make sure that there are no angler conflicts with the commercials but there never has been. They are not gaining anything by this but you can't take this fishery away from people, it's not feasible.</p>
<p>Jim Markee Keizer, Oregon</p>	<p>Jim Markee represents Salmon for All (SFA), an organization of Lower Columbia River (LCR) commercial fishermen. On behalf of his client he was there to support the staff recommendation for the no fishing zone; the Bridge over to the dock along the green buoy line. He said SB 830 prescribes a requirement that you adopt some kind of a no fishing zone in this area at the mouth of Youngs Bay this month. We support that. We believe that the Governor came up with this grand scheme to shift allocations and prioritize the mainstem river for sports fishermen, and to prioritize Youngs Bay and the other side channel areas for the commercials. He said we did not support the plan and still don't support the Governor's Plan. There are allocation shifts moving away from us to the sports fishermen and you don't hear them in here (complaining) about that because they get more fish. Markee said there is plenty in the Governor's plan for everyone to hate. This piece will protect some fish headed for Youngs Bay and allow our folks an opportunity to make a living.</p>
<p>Bob Oleson Milwaukie, Oregon</p>	<p>Bob Oleson, Northwest Steelheaders Association (NWSA), said when the Governor courageously initiated his Columbia River fishing directive there were many suggestions and ideas that surfaced. One of the concepts that went forward was the exclusion zone. But as most of us here looked at the current proposal it makes less and less sense. You will be hearing and reading a number of statements to underscore this point. He said there are items including the lack of needs, safety issues, and what supports good economics which would be a smaller zone. Oleson referred the Commission to the communications in particular from Mr. Rees of Northwest Anglers and Bill Kremer's, the president of steelheaders. He thanked the Commission for giving</p>

	consideration to a more reasonable sized zone.
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1
2 Commissioner Webber said he understood that the Youngs Bay bubble was put into the
3 legislation at the request of the gillnetters or the commercial fishermen, or do you know?
4

5 Markee said he requested the amendment personally on behalf of his clients - SFA. You
6 folks considered such an exclusionary zone earlier. At the time, the Governor's staff
7 came in here and said it was just probably not necessary. Markee met with the
8 Governor's staff. He met with many legislators and explained to them that if you are
9 going to prioritize Youngs Bay for commercial fishing you somehow have to allow the fish
10 that were raised in Youngs Bay to return there. He said we were having a tremendous
11 problem with mostly guides, not in small boats but in their six pack boats, sitting right
12 outside Young's Bay hammering those fish and our guys sitting inside Youngs Bay not
13 getting anything. So, we felt this was fair. Markee said where should the line be? We
14 had asked for a larger area. The sports guys want a smaller area. Some of the sports
15 guys want you to adopt an area but not implement it for three years because then they
16 could still fish there for three years. Others have suggested that you put this no fishing
17 zone out over the top of the mudflats where nobody fishes anyway. Markee said it is
18 clear from the Legislature that they wanted this to be a meaningful exclusionary zone
19 that should allow for less interception of fish headed for Youngs Bay. That is what the
20 staff recommendation does and why we support it.
21

22 Commissioner Webber said in all due respect to the staff, SB 830 says where they want
23 the line which is at the mouth. He is trying to figure out exactly where "the mouth" is.
24 He noted that at the Commission's January 10th meeting he received a navigation map
25 from Jim Wells (see public testimony handout for Exhibit E – Progress Report on
26 Implementation of Columbia River Fish Management and Reform Rules). He said
27 looking at the depths and what it looks like it does not look like where the green can line
28 is - at the mouth of Youngs Bay and that is what I am wrestling with.
29

30 Markee said he thinks the Legislature did not know where the mouth of Youngs Bay is
31 either, and the lawyers in Legislative Counsel used that language to generally describe
32 an area. He was not sure you could identify exactly where the mouth is and say that is
33 where the line is going to be. If you did and it did not result in less interception of fish
34 headed for Youngs Bay, you would not have met your purpose anyway. It is clear
35 because the language talks about why they want the line. Markee said this is a
36 reasonable area and yes you can say it means the mouth of the bay and this may not be
37 the mouth. Markee said he was going to leave it to the lawyers that wrote this. You are
38 interpreting something that may not need interpretation.
39

40 Commissioner Wolley said what do you feel would be the loss to commercial fishing if
41 the line was set at Skipanon and across? Some of the points that have been
42 recommended versus where the line is being proposed by staff, what would you say
43 would be the negative impact?
44

1 Markee said you can move this line anywhere you want. You can run it one way or
2 another and you will either increase or decrease the number of fish that are intercepted
3 that are actually headed for Youngs Bay. You have to ask yourself what is our purpose
4 in establishing such a line? The legislature clearly said the line should be established to
5 prevent the interception of fish headed for Youngs Bay that were actually raised there.
6 This line recommended by the staff accomplishes that purpose. Markee said he does
7 not commercially fish Youngs Bay so if Mr. Wells was here he could probably give you a
8 better answer but he is in Astoria and unable to be here today.

9
10 Jody Mather said there are a few factors involved here. But if you were to ask how many
11 fish were intercepted and how many are not, I would ask how many fish are caught in
12 Youngs Bay that are destined for upriver. They get in the school and move in and out;
13 there is going to be interception both ways. He said that closed the fishery off for a lot of
14 sports fishermen. If you look there in the evenings during the beginning of August there
15 is always, not a lot, but half a dozen small boats that can't fish anywhere else in the river.

16
17 Bob Oleson said NWSA believes that a smaller zone would have positive impacts and
18 would not have major negative impacts. You will be getting testimony from people who
19 have a lot more expertise than I do.

20
21 Markee said when Mr. Oleson is talking about positive impacts he is talking about
22 positive impacts to the sports fishermen, not the commercial fishermen.

23
24 Oleson added, and the economy.
25

<p>Paul Alexander Salem, Oregon</p>	<p>Paul Alexander said the next chart on this slide (#11 – Proposed Young Bay Control Zone) or is slide 12 on page 6 shows the whole area. He asked was this the same chart, the same line that appears on the next slide that was given to the Commission to vote on in December 2012. Three percent of the public have access to the mainstem Columbia River fish thanks to what was passed recently. He said 90% of the public represent our sport fishermen or sports fishermen guides; guide commercial guys. Originally, the Governor ordered 100% of the fish. In 2017 it is going to be 80% of the fish in mainstem Columbia. He said the rest are probably going to be caught by either Native Americans or a transitional fishery off the mainstem via seining, which is crazy to try to change fisheries; it requires bigger crews.</p> <p>Alexander grew up on the Columbia River at the mouth. He said the green line meaning the buoy line is a perfectly fine line for having a boundary; it is easy to enforce. For boats fishing there (six to seven in that area at night) and on that little area of the river that is not safe, you shouldn't be out there and have your boat on the river. He said that area is very dangerous too when the tides are ripping and when the</p>
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	<p>ships are coming up and down the channel. The boats are all the way down to Buoy 10 and upriver there are thousands of boats. Moving a few boats out of this lower area is not going to kill their fishery.</p> <p>He said if you look at the next slide you will see there is tons of access. North of the green line somebody said it turns to mud but I see boats fishing there all the time on the north side of the green line all the way up to the Bridge. There is quite an expansive area from the green line north going toward the Washington side on that side of the north, Desdemona Sands; there is plenty of room. That guy that mentioned that he has never fished down there. Never been down there the first guy that spoke. He said this is just a fix for what was legislated by you guys and voted to shut one fishery completely down on the mainstem Columbia River and take away a lot of jobs. This is a fix to help these commercial fishermen to continue what they have done for generations as commercial gillnetters.</p> <p>For wild fish or big salmon dipping in and out of Youngs Bay there are records for that. He said those gillnetters are inside the Youngs Bay river or the bridge there fishing it and that is mud flats at low water. They are fishing the shallow bay inside the Bridge. Regarding the line, it really makes it sensible for enforcement to have that green line where they have it and the way the police have asked to enforce that. He said if you are going to have a bubble area like that for enforcement that makes sense. He hopes the Commissioner will consider the lives of the commercial fishermen that are left.</p>
<p>Grant Putnam n/a</p>	<p>Grant Putnam said he is a business owner and participant of the Buoy 10 fishery both as a guide and a business man in general. Regarding the exclusionary zone in the legislation it does state that we are supposed to provide something for the commercial fishermen. He believes we do need to do that but doing something out at the green line and being there for a 35 to 40 day period every fall along with many other fisheries. During that Buoy 10 fishery we do see a lot of usage for these sport and recreational fishers. Putnam asked how much of an impact it would have if we were to not have this. There has been statistics by the Department that we may have an impact between four to seven percent on the actual impact of the gillnet fishery in Youngs Bay.</p> <p>He has a condominium on the Skipanon River where he</p>

	<p>moors his boat. There are many folks that live there fulltime that pull up on the end of the Skipanon River; they turn around and start fishing and never leave that area. Yes, there are many folks out at Buoy 10 in small vessels that probably should not be out there but that is their decision not ours. Regarding economic impacts and closing off the Buoy 10 fishery, we see that the effort really spreads out quickly during that fishery. We see the most usage in the first 10 or 15 days of this fishery early on. After that you don't see nearly the impact or effort in that particular area.</p> <p>Putnam said it is going to be an enforcement nightmare for the Buoy 10 green line. If you were to start trolling way above the Bridge at an outgoing tide in the afternoon with west winds blowing, you can start in 12-feet of water and in a matter of minutes you can be blown into or through the green line area, which under this proposal would be closed. It is going to be a nightmare for folks to try to enforce and is going to create a safety issue. He believes the tip of the port docks to the Skipanon makes good sense. It's manageable and not something that is going to create safety issues. It does give a buffer zone; it does what Measure 38 says it should be doing. It is a great solution all around. He asked the Commission to consider the tip of the port docks to the Skipanon. He doesn't believe there will be the negative impacts that we may see if we do actually implement this kind of exclusionary zone.</p>
<p>Randy Woolsey Tigard, Oregon</p>	<p>Randy Woolsey said he has served on the Columbia River Recreational Advisory Group from its inception a few years ago. A lot of the testimony today is pretty self-evident as to the concerns of this exclusion zone. It's not just to give good testimony; it's being talked about passionately by people who have experience navigating those waters. He noted a previous slide that showed the whole fishing area from Buoy 10 to Tongue Point and said in a large section in the middle of the river there is a sandbar that covers a huge amount of this area. These fishing areas that are popular within that whole area are pretty confined. He said this Youngs Bay fishing area there has been a traditional area for these small boaters. It isn't being talked about just to make their testimony sound good but it is real and it is dangerous.</p> <p>He did not come here today to testify about sport fee increases that have been put into place to help assure the economic impact on commercial fishing in that area, or barbless hooks restrictions, loss of sport sturgeon retention,</p>

	<p>safety concerns surrounding that Skipanon river area, defending Oregon’s position in the gillnet lawsuit, or any other punitive measures implemented on the recreational fishing community. Woolsey said in some ways he has been preparing himself to let this exclusion zone topic be just another action that recreational fishermen had to endure to get the kind of change our government promised to gain the economic optimization of these fisheries. Simply put the gains outweigh the pain.</p> <p>After spending since the first of the year and having recreational fishermen call me outraged about having to spend more money, having restrictions to their fishing areas, and spending a couple of days at the Sports Show talking about almost nothing else, he felt he had to come today and testify and urge the Commission to allow Oregon and Washington’s economies to share in the benefits of SB 830 without any more roadblocks but success. A better way forward has been proposed by that bill. We all remember what these meetings have been like over the last 15 years.</p> <p>Woolsey said let’s wait until the data comes in from these fisheries before we make decisions about changing the fishery. There will be a lot of information from your staff in the next couple of years about the benefits of enhancing these safe areas and what the true benefits are. He said the negative benefits to restricting recreational fishing are going to be significant and if they don’t need to happen they shouldn’t. I hope that we wait and have more information about these fisheries.</p>
Paul Alexander	<p>Alexander asked to add a comment. He said the commercial fishermen provide the fish for 97 percent of the people of Oregon and 3% are sport fishermen.</p>
Bruce Polley Sherwood, Oregon	<p>Bruce Polley, Coastal Conservation Association (CCA), distributed and read from his written testimony. Highlights:</p> <ul style="list-style-type: none"> • CCA believes spot fishers have “paid forward” in many different aspects of this policy to show their commitment to the future of our fisheries, and many feel they are bearing the brunt of the reforms thus far with uncertain future benefits. • CCA believes it shares the same goal with ODFW – showing the positive benefits of these policies to recreational anglers; critical to successful reforms. • Youngs Bay bubble. No specific benefit defined by staff for closing this area to recreational anglers who are

paying for increased production in terminal fisheries through the Columbia River endorsement.

In January CCA presented options to the Commission:

- A smaller closed area.
- Increasing production of SA Brights to benefit sport and commercial fishers; eliminating need for a closed area.
- Establish a closed area but not implementing it until later in transition period when economic benefits will become more necessary.

Polley said sport fishers are supportive of the reforms that the Commission passed into rule last year, but the additional pay forward without guarantee of future benefits has become very contentious. CCA asks the Commission to go on record that **any** closure area will be considered to be linked to other critical components of the reform you voted into rule:

- Removal of gillnets from the mainstem by 2017.
- Selective Recreational Priority for LCR mainstem.
- The agreed shifts in allocations.

Polley said it is important that sport fishers hear from the Commission that the paying forward will deliver the promised benefits that were made. He held off on the other parts of his testimony (see handout) regarding sturgeon, barbless hooks in the Willamette, and sport fishing enhancement ideas that CCA has. He plans to email the Commission supporting information on the sturgeon status.

Polley referred to the compromise line being discussed and the ability of law enforcement to be able to enforce that from a land based position. He said if you do draw the line from the mouth of the Skipanon to the end of those jetties on the Astoria side, law enforcement can still drive right to the end of those jetties and enforce it from a land based position in a straight line from there to the mouth of the Skipanon. A few buoys between the two would make a very visible enforceable line.

He said the \$10 Columbia River endorsement fee the sports fishermen are now paying in order to provide commercial fishermen guaranteed catch has increased the number of SAB by 500,000 so far. The Commission was given a report on that last month by staff. If we were to take a wild guess, in talking to staff over the last couple of months, instituting a closure may save 9% or 10% of the fish returning to Youngs

	<p>Bay. He said it would be a very simple step to basically increase the production that sport fishermen are currently paying for and that way both sport and commercial benefit, which is the intent of the policies.</p>
<p>Rod Sando Woodburn, Oregon</p>	<p>Rod Sando represented his own personal opinion and not for any other organization. He volunteers for the Northwest Fishing Association as a science and policy advisor. Sando said he served 22 years at the Minnesota Department of Natural Resources, eight as its head, and was the Director of Idaho Department of Fish and Game for two years. He was the Executive Director of Columbia Basin Fish and Wildlife Authority in Oregon for three years.</p> <p>We are here today because of legislation passed last legislative session that requires the Commission to establish a zone in front of Youngs Bay that will exclude recreational angling in order to reduce the interception of fish headed into the bay. He said there is no direction concerning how much reduction is needed; that is the Commission's decision. The Legislature has left it to the Commission to determine the boundaries of that zone. You are free to establish the exact boundaries since the legislation gave no direction other than it must be in front of Youngs Bay. As you aware, the proposed boundary has created some controversy. Sando said controversial decisions need to be executed carefully with good justification and the sound decisions will be accepted provided they are based on solid rationale. The public will not easily adopt or accept decisions that are arbitrary or appear to be capricious. Yet these two points are often the basis for court opinions when administrative decisions are challenged. My lawyers always advised me to avoid court challenges if possible and to see other forms of conflict resolution whenever possible.</p> <p>Sando made the following points:</p> <ul style="list-style-type: none"> ● In the Commission's information packet there is no specific measure of the current interception of fish bound for Youngs Bay; the data is simply not available. To proceed with the proposed boundary is therefore arbitrary since there is no evidence of its current real impact. It could be solved with the collection of angler data but it is not currently available. ● Asked the Commission to adopt a zone reduced in size and direct the staff to intensively monitor angler interception during the 2014 season and revisit this decision for implementation in 2015. This is an effective

	<p>compromise that could lead to a stable and long lasting resolution of the issue.</p> <ul style="list-style-type: none"> • The Commission must manage and establish such a zone but its establishment should consider the issues raised by the affected public in meaningful ways. The proposed zone will exclude a popular location for small boats that need safe waters. • There is no analytical evidence of what the real impact on this angler segment will be and should be measured. Otherwise it would also appear to be a capricious intent and again in the absence of hard data continue the controversy. • Asked that staff be directed to address this issue and report back to the Commission for consideration in 2015.
<p>Liz Hamilton Woodburn, Oregon</p>	<p>Liz Hamilton, Northwest Sportfishing Industry Association (NSIA), distributed a navigation map of Youngs Bay and noted the spot where the blue and white lines meet each other. She said this is the zone she thinks is talked about in terms of where people fish in early August and where little boats fish throughout the entire time. The other side had two pictures. She and her family put their boat in at Astoria early (first week in August). During the big fish runs there you cannot get a hotel room, moorage, or buy bait or ice. The top picture of a little boat shows how close it can get to the shore. She said it is calm there, so the small boats are not being irresponsible by being out there. This guy is equal to us (see bottom picture) when he catches that big fish; this is one place where they are a great equalizer and they can catch a big salmon and still get back to shore easily with their little motors.</p> <p>Hamilton said NSIA encourages the Commission to make a very minimalist decision today for the following reasons:</p> <ul style="list-style-type: none"> • The Commission has got to make a decision because of SB 830. • There are claims being made about how much the interception is but there is not a lot of data about what that number is. • There is other data the Commission should ask the staff when they bring them back up here; when the Commission makes decisions about what is fair. • What staff will confirm is over the last dozen years there has been more fish landed in the Safe Areas that are a 140 miles of sport fishing. • In the same dozen years there has been millions more

	<p>smolts added numerically to the Safe Areas which is part of the plan. Bruce pointed out earlier that more of these rogue Brights have been added.</p> <ul style="list-style-type: none"> • Interception of maybe seven percent means 93% of these fish are being harvested by the commercial fleet. Some of the mainstem fish are wandering in with them. • She asked the Commission to ask their staff how many fall Chinook were harvested last year by sport and commercial in the mainstem. She said you will see an enormous increase in the commercial harvest over the sport harvest. No complaints there. We are talking about a handful of fish in an area that is prime real estate for two weeks; prime real estate for safety. We are talking about what? – a thousand fish when the commercial fleet probably harvested tens of thousands more than the sport fleet did in the fall. • Remember, there are no changes that are going to be in the allocation in the fall for several more years. <p>Hamilton said there were lots of things we agreed to pay forward and we're taking a lot of hits for it, but it is compromise and part of getting to an agreement. We knew there were going to be some tough compromises. This is the point at which folks are feeling that it might be a little beyond fair and into the punitive zone. Folks feel like this is a really rough ask on top of the other things being put on the table. She said if you look at the legal definition of the Skipanon River it flows into the Columbia. It does not flow into Youngs Bay. She asked the Commission to keep that under consideration when they decide their boundary.</p>
<p>Bill Huntsinger Astoria, Oregon</p>	<p>Bill Huntsinger, Port Commissioner; commercial fisherman; and Columbia River Salmon Commercial Advisory board member, said this is the Governor's plan. He referred to Slide 11 - What Does Staff Recommend and said if you look at this small area here you can look here all the way to St. Helens, we haven't laid a net out in that area for two years. He asked how tiny is this spot compared to all the way to St. Helens. In the daytime we have not laid a net out in the Columbia River except in October after the sports fishery is completely gone. The guy that tells you, this guy in here – Gene Kane had the best year he ever had and he said, where are they going to go? They won't come out of the Skipanon. Huntsinger said the Skipanon River is the Warrenton mooring basin; the only boat ramp you can come out. You can't get a parking place there; I don't know where he is coming with that idea. Everything north of that green</p>

line and the guy says you can't fish there, it's all mudflats, what is a big sandbar on a big minus tide. He said there is plenty of room to fish there. The guys that lay their nets out 250 fathoms long from that sandbar out don't come anywhere near that green line. He said check his fathom meter; there's 30 to 40 feet of water over there.

When you look at the Youngs Bay map, if you went from Pier 3 at the port docks to the mouth of the Skipanon there is no water in there anyway. At low water tide at a minus tide there is three feet of water going in to Youngs Bay; it is all mudflats. He said if you think about the pinhead that little map would be over 140 miles of river all the way to Bonneville Dam that a commercial fisherman never fishes in the daytime, except in Youngs Bay or the terminal area. He said that's crazy.

Huntsinger said how much more does one industry want versus the other. If you came down and went to our mooring basin in the Port of Astoria and you went to where they clean fish there, you will see that 95% of the fish that they are cleaning are rogues that belong in Youngs Bay. To let some of those fish come up on the bank in that green line the way they are in that cool water until they make up their mind to move up into Youngs Bay, you go out there and there is fish on all the time.

He said if they are out there in those small boats and it is blowing then they need to go home. Gillnet boats go home if it is blowing in Youngs Bay. It blows a lot harder in there because there is nothing to protect them. You go out there at Buoy 10 and see how many little boats, and ask yourself what is that guy doing here all the way down to Buoy 10 in a duck skiff. It's hard to understand why these guys need to have it all.

You talk about bubbles. When we get reduced by October 15 we will not lay out another net. By October of next year we won't be laying out a net anyway because the run won't be big enough. Who got hurt in this last year's fishery? Sports caught all the fish they could catch and they caught a lot more of those fish above the yellow line that is Tongue Point and Rocky Point line and up than they actually caught down below. The guide boats went up two or three times filling their limits; six guys in the guide boat; a \$150. Who made the money? Did the commercial fisherman make that? I don't think so. The commercial fishery is the guide boats.

	<p>Huntsinger said you have cut it back as far as you can cut it back. There has to be some type of safety zone. He knows every game warden in Astoria. It is absolutely perfect from the sawdust pile to the green line to the Bridge. He doesn't know why that doesn't work. They wanted a bigger area but when they lose fish upriver and lose Zones 4 and 5, they are going to need one at Tongue Point, where their other terminal area is, a bubble there. Also, across the river at Rocky Point where Deep River is they will need a bubble there. When they try to put in these new zones all the way up the inside we will need bubbles there. We're going to need bubbles all the way to the top of Rice Island and up to Wyse Island, which is up by Puget Island.</p> <p>Huntsinger said the gillnetters do not want all this stuff or the extra \$10 for sports fishermen to pay. It's the Governor's plan, not ours.</p>
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1
2 Chair Levy asked Legal Counsel to talk about the “shall” and what Section 3 (b) says
3 legally for the Commission. Numerous people have said to the Commission that “shall”
4 means it is left up to the Commission to do what we want.
5
6 Legal Counsel Steve Sanders said the closest interpretation of this he would land on
7 would be with Mr. Markee. That is the use of the phrase “a zone at the mouth of Youngs
8 Bay is not intended to be a geographically extremely specific thing.” What the
9 Legislature is telling you is really is a result-oriented kind of closure. You are directed to
10 try to reduce the interception of hatchery fish returning to Youngs Bay. The size of that
11 and where exactly you put it is going to be a political question for you. The zone at the
12 mouth of Youngs Bay, in my view, could incorporate virtually any of the proposals you
13 have heard.
14
15 Chair Levy said we have had the recommendation from the staff and we have had a
16 recommendation to move it further back so that recreational fishers could have more
17 opportunity. She asked Captain Jeff Samuels to talk about enforcement on both of those
18 areas.
19
20 Captain Jeff Samuels, Division Director for OSP Fish & Wildlife Division, said regarding
21 that he did hear some testimony today and appreciates her asking him to clarify that. He
22 said there are times where we would want to come before the Commission based on an
23 area closure that we might ask for. This is not one of those times. He provided
24 information relative to what helps enforcement. His job is to help the Commission know
25 what makes all the Troopers’ jobs out there effective. He said straight lines are very
26 helpful. There are several proposals of straight lines. The State Police Fish and Wildlife
27 Division is not coming forward and saying it has to be the green can line. We were just

1 asked by staff if the green can line is enforceable and I believe it is enforceable. He said
2 I think there are other lines that would be enforceable.

3
4 Chair Levy said on this map that has been provided (see 8-1/2 x 11 map – Youngs Bay
5 Control Zone (Options) distributed by Kern and North) you see the blue and the white.
6 She held up and pointed to the map and said, if we as a Commission moved it back to
7 this part is it enforceable?

8
9 Captain Jeff Samuels said if the line is the blue and the white curved line that is not
10 enforceable; however, if you draw a straight line between two points that would be
11 enforceable. So, you could have a line near that location that is a straight line that would
12 be enforceable. I have heard of a line from the Astoria docks to the Skipanon River point;
13 that straight line could be enforceable. We could enforce that. Chair Levy said okay.

14
15 Commissioner Wolley said just to clarify with the line the change in color that is just the
16 underwater topography. You weren't really implying that that was a line necessarily.
17 Chair Levy you were really talking about a line straight across from the Skipanon to the
18 docks? Chair Levy said yes, somewhere in that vicinity.

19
20 Captain Samuels said OSP would enforce any of the lines that you might decide to go
21 with. We're definitely going to have on the water enforcement because you might see a
22 boat across a line whether from the bank or not. But you are going to want to make
23 contact with the person in close proximity to the time of the violation. Again, we could be
24 on the bank at a point, wherever you decide the line is, and be observing that someone
25 is across that line and angling in violation of the prohibition to angling across that line.
26 But we need to make contact with them at some point and there are multiple, as has
27 been mentioned to you today in the testimony, multiple points of boat ramps to go to. We
28 don't know where they are going to go to. It is going to take several of my Troopers to
29 enforce that line but we can do it. It will be a combination of probably land and water
30 patrol to make that enforceable.

31
32 Chair Levy referred back to the white and blue map and said if somewhere between the
33 red line and the blue topographical part and if we did halfway between both of those,
34 could you enforce that and is there some way we could mark it to make it clear to
35 recreational fishermen; that they could not go any further down. It would make it
36 enforceable and easily recognizable by the recreational group.

37
38 Captain Samuels said the answer to that question is where you might decide to do it. So,
39 for enforceability and for knowledge of anglers to know where the line truly is it is good to
40 have points or buoys or signs so there is a definite mark. It is a shipping channel in that
41 area that you are talking about. So if we are talking about adding buoys, that is going to
42 take some work to add a buoy with more than the Commission's help.

43
44 Chair Levy said for the record it has been brought to her attention that the area of the
45 closure represents only part of the overall Lower Columbia River fisheries program. If for
46 some reason we have some sort of litigation that comes up before us the package does

1 not go forward and that includes this closure. You need to keep that in mind. We have a
2 lot of litigation lately.

3
4 Commissioner Laura Anderson said just for clarification since I don't have the same
5 visuals that you do, please verify the blue line where it starts and ends.

6
7 Chair Levy said it is a topographical map that shows Youngs Bay and we have a colored
8 map and its blue water and it goes out to white and it goes back to blue just before it gets
9 to Desdemona.

10
11 Commissioner Webber said if you look at the pictures that are included in the packet, the
12 proposed Youngs Bay control zone (see Attachment 4 – Map of Proposed Boundaries of
13 Youngs Bay Control Zone), look at the City of Astoria and the downriver projection there,
14 the point where there are docks. You can look over to the other side of Youngs Bay and
15 where the Skipanon River comes out the line that Chair Levy is talking about, if you drew
16 a line from the tip of that projection over to the east side of the Skipanon River the blue
17 line bows very slightly to the south of that and back up to where those points are.

18
19 Commissioner Anderson said that was generally the line that she had.

20
21 Commissioner Wolley said the question is why your location that was chosen and the
22 justification for that. Does it have a lot to do with where the existing buoys are and that
23 there is already a marker there? It seems to be the most visually reasonable place to put
24 a line in terms of someone knowing if they were in or out or one side or the other. Why
25 from the Fiber dock to Astoria-Megler Bridge and the justification.

26
27 John North said when this control zone was originally put together in December 2012 the
28 thought process there was this is big water, this is a large area - the Buoy 10. We
29 wanted to use identifiable structures. You need some big things; a sign on the bank is
30 not going to work here. We considered that and we were looking for a straight line as
31 possible. We were also trying to write something that would speak to what we thought
32 the intent of the rule was which was to reduce interception. He said we also considered
33 your guiding principles that you had also adopted; 7B speaks to expansion of the existing
34 Safe site. We have been test fishing outside the bay and we tried to consider all of that
35 and come up with something that would create a zone that would meet all that.

36
37 Commissioner Akenson said she thinks that staff has looked into best options and has
38 taken public comment. The timing and the location of this proposed area is appropriate.
39 But like the many other issues we have had with the Lower Columbia River fisheries
40 management, we don't have all the information we need. She feels the Commission
41 could go ahead with staff's recommendations. But what sorts of things could you monitor
42 for us that say next year you could report back related to area and timing of this closure?

43
44 North said monitoring this will be challenging. First, it is hard to monitor something that is
45 closed. It terms of effort if it is closed we cannot count the boats that are in there and
46 vice versa. But there are a lot of factors that affect things: adult survival that affects the
47 run sizes; the number of smolts that are being released; ocean fisheries that affect what

1 return to the Columbia; and season lengths both sports and commercial all affect the
2 results for each fishery. There are a lot of moving parts that make it hard to isolate the
3 effect of one specific action. One thing we have looked at one tool might be to look at
4 the sharing of specific Youngs Bay releases between sport and commercial, look at what
5 it has been in the past and try and track it forward. North said he was not sure if that has
6 the level of detectability to isolate the differences considered here.

7
8 Commissioner Akenson said what about the timing? In some of the written material it
9 appears that maybe the timing of that run tends to be more early on in that 45-day
10 period. Could we get information from the commercial fishery about what kind of harvest
11 levels they have over time to see whether that timing could be adjusted or maybe
12 shortened in the future if that was warranted.

13
14 North said commercial landings for the last three year averaged about 88% of the
15 Chinook harvest occurs from August 1 through September 15. About 67% of the coho
16 harvest occurs during that timeframe. It is true what many people have said today that
17 early in the season if you are going to go out fishing that the big run has not arrived in
18 the Columbia so people will at least give the mouth at Youngs Bay a try because it has
19 been written about lately in papers, it is more popular now. He said yes, there is a higher
20 percentage of the effort that is out there at Buoy 10 will be near Youngs Bay early in the
21 season than later. For example, last year when we had over a million Chinook enter that
22 were destined for the upper Columbia, you had a run of about less than 10,000 Select
23 Area Bright Fall Chinook heading to Youngs Bay and anglers are going to be more
24 inclined to go out in the mainstem. But there are issues like the weather that affect all
25 that. He said it is a very dynamic fishery. People are always moving; they will move five
26 or six times a day. They will chase radio fish and run all over the area there. If the wind
27 comes up which it always does in the afternoon then you have to make your decisions
28 based on the wind and not where you want to fish.

29
30 Commissioner Akenson said with the boundary where it is on our proposed boundary it
31 includes the shipping channel. Is that because the fish will stage in that deeper water
32 before coming into Youngs Bay?

33
34 Chris Kern responded that is more a result of where there are buoys that you can draw
35 the line. You do have some limitations in between the several lines that we have
36 discussed. The two that seem to be gaining the most discussion are the port docks to the
37 Skipanon point and the proposed line. He said there is not a lot in between there to draw
38 a line between. The south side of the marker channel is not marked at the same degree
39 as the north side on the green cans.

40
41 Commissioner Akenson said so the channel itself is not needed as part of that protection
42 zone? Or does that play an important role in affecting that fishery for the commercials?

43
44 North said it was not a strong consideration in the original drafting of this. A lot of people
45 might not be familiar with this area. Buoy 10 is very dynamic, it's exciting. People come
46 from all over and sometimes it is hard for them to know exactly what the regulations are.
47 When we add something like this we want it pretty straight forward. They all know where

1 the sawdust pile is at Warrenton Fiber. They talk in terms of the green buoy line and
2 know where that is and where the Bridge is. He said that had more to do with it then
3 assuming that the fish were staging in the channel. Although we do think there is some
4 staging that occurs out here before they enter Youngs Bay because the bay is shallow
5 and tends to be warmer. We do think that fish will stage more to the left hand side of this
6 rather than the east or upstream side. He said we don't know that for sure, it's based on
7 test fishing.

8
9 Commissioner Webber said we are talking about these lines and if we decide on a line
10 do we not have to then negotiate with Washington in this area?

11
12 Kern said the outside of the 101 Bridge is concurrent jurisdiction waters like most of our
13 fisheries. However it is also on the Oregon side of the navigation channel. He said Legal
14 Counsel Sanders may have more comment on the technicalities of that but he thinks it is
15 within the Commission's authority to close off certain areas on the Oregon side of the
16 border particularly when their associated with geographic boundaries near the shore.
17 There are other examples even on the Washington side where that does occur but I want
18 to make sure with Mr. Sanders first.

19
20 Legal Counsel Sanders said he would agree with that. There is actually an odd set of
21 case law with respect to the Columbia Compact between Washington and Oregon where
22 we were supposed to have all of our regulations matched up. He said the case law
23 interpreting that really does not require that. So although it may lead to awkwardness
24 in terms of enforcement it is not illegal for the Fish and Wildlife Commission here to set a
25 regulation in these waters that might be different than Washington.

26
27 Commissioner Webber said he remembered that this was Compact waters. Legal
28 Counsel Sanders said there is an issue about where the Compact waters break off and it
29 becomes the waters of the state. For other purposes and over the past few decades, the
30 Oregon and Washington Commissions have set different regulations particularly within
31 these waters on their side. It has become the defacto way that the river has been
32 regulated and the case law, which otherwise appears to require us to have uniform
33 regulations, does not really mean that.

34
35 Commissioner Webber said when we start looking at the line, when I looked in the
36 packet and got to the zone it was clear to me that it is at the mouth of Youngs Bay. When
37 they say at the mouth of Youngs Bay, the current staff proposal includes entire shipping
38 channels. He doesn't think that ships going up the Columbia River go through Youngs
39 Bay; they stay in the river. He said he has a real problem with including or using the
40 north side of the shipping channel or the far side of the shipping channel as the line. Tell
41 me why I am wrong.

42
43 Kern said he could not tell Commissioner Webber that he was wrong. We have
44 discussed a little bit about the nuances of the discussion of what does the mouth of
45 Youngs Bay entail. We focused a little more on what the meaning of the word "zone" is
46 than we have on the "mouth". The zone is sort of a polygon; it is not necessarily just one
47 line. Kern said it encompasses a zone, an area of some kind. As we discussed earlier, it

1 is fully within the Commission's authority to pick a different line based on your
2 interpretation of what that statute means and where the mouth should appropriately be
3 drawn. You really have maybe four sets of points that are conveniently located in this
4 general vicinity:

- 5 1. Warrenton Fiber location across to the Bridge
- 6 2. You could draw from the Warrenton Fiber to the Port docks or take that line all the
7 way south.
- 8 3. Mouth of the Skipanon north to Green Buoy #29, then east through the remaining
9 green buoys to the Astoria-Megler Bridge.
- 10 4. Go from the Skipanon on over to the Port docks

11
12 Kern said there are four pretty good reference points that lead you in a straight line
13 somewhere that you could move around to encompass what you feel appropriately
14 covers the "mouth".

15
16 Commissioner Webber said you have the proposed line, you have the Skipanon to the
17 Port Docks, and then from the sawdust pile to the Port Docks?

18
19 Kern said John North has a slide (see Youngs Bay Control Zone (Options). Referring to
20 the slide, he said you have a green line there that is similar to what we have been
21 hearing – the Skipanon to the Port Docks. You have the line that is in the packet as a
22 proposal -from the Bridge up to Warrenton Fiber. He said nothing really precludes you
23 from drawing another straight line diagonally across either of those proposals. For
24 example, Warrenton Fiber over to the Port Docks, or conversely, the Skipanon over to
25 the Bridge if you choose to. Those are all straight lines as multiple options for you to
26 consider.

27
28 Commissioner Webber referred to the same slide and said you see the green line, which
29 is Skipanon to the Port Docks. If you compare that from the Port Docks over to
30 Warrenton Fiber, if you went from the Warrenton Fiber over to the Port Docks, is that
31 going to reduce to a greater extent the interception then if you went from the end of the
32 Skipanon over to the Port Docks.

33
34 North said if we could overlay the fishing effort on these lines that would be helpful. He
35 said they did not have pictures but referring to the same slide said in this immediate
36 area, not the whole Buoy 10 area, you are not going to see much effort up in the area up
37 to the red line. It is very shallow and there will be almost no boats in here at all. You will
38 find boats fishing along this bank just inside the green buoy line; that is a common drift.
39 You will also see boats right off the Skipanon right through this zone just trolling back
40 and forth in here. He said if you had to draw a center point on Youngs Bay fishery it
41 would be right around in this area and up that bank a little.

42
43 North described the lines:

- 44 • Yellow line was proposed by Salmon for All; from Warrenton Fiber out to green 27
45 (G "27") and then cuts back into the staff proposal.
- 46 • Red solid line is the staff's proposal.

- 1 • Blue line is an alternative from Warrenton Fiber diagonally to the tip of Pier 3.
- 2 There is a Dolphin there that we would probably have to put a marker on.
- 3 • Green line from the Skipanon over to the same Dolphin.

4
5 North said we cannot tell you for certain but he believes that the blue line would impact
6 the sports fishery more but potentially escape more fish to the commercial fishery than
7 the green line.

8
9 Commissioner Webber said the green line will reduce the interception of the fish to the
10 SAFE area. North said this is an extremely hard question to answer because the fishery
11 is highly adaptive and they will move all over. He referred to the slide and said what you
12 could likely see are boats stacking up right through in this area outside the green line. He
13 could not really tell what the affect would be.

14
15 Commissioner Webber said the Legislature told us we have to draw a line. Wherever we
16 draw the line would it not seem logical that the boats will stack up right against that line?
17 North said yes, what he was trying to portray is that right now there is some boats inside
18 the green line. He said if they just moved 200-yards out and fished outside of that he
19 could not tell the Commission if that will result in catching less fish. Staff does not have
20 that detail of sampling.

21
22 Commissioner Webber asked if there is any reasonable way to get that information.
23 North said it is extremely hard data to collect. We sample this fishery in its entirety. There
24 are many ramps on the Oregon and Washington side of the river. There are fishermen
25 coming from the ocean and all parts of Buoy 10. He said to ask them where did you fish
26 today, they probably fished 10 different locations and then how do you define the
27 location and the hours that they fished. It is very hard to do.

28
29 Commissioner Webber said that answers my questions.

30
31 Commissioner Laura Anderson said she concurs with Commissioner Akenson's
32 comments. The staff has done a great job of diligence in coming up with this
33 recommendation. She also understands that the public testimony regarding the
34 uncertainties about what the cost and benefits of what this decision will be. In my
35 viewpoint we have really been forced into making these kinds of difficult decisions
36 without a lot of hard data. What we do have is a list of objectives generally that we are
37 trying to meet with this policy. She said those objectives are going to define the criteria
38 as we move forward and evaluate the decisions in the future that we have been asked to
39 make in the last year and especially today in terms of whether or not recreational and
40 commercial harvest objectives are being met, conservation objectives and economic
41 objectives and so forth. We may never have the data to really know the specific effect of
42 every single component of this overall package. But we do have objectives to look at in
43 the future.

44
45 Commissioner Anderson said she had a question for Mr. North. Because there are so
46 many components involved in every single decision we make, whether or not there is

1 anything happening with test fishing in this area that would influence anything in this
2 Control Zone, whether these lines should be located where you are test fishing now?

3
4 North said as part of this package we have been directed to look at new Select Area
5 sites and also the potential for expanding time and area within the current sites. In
6 relation to Youngs Bay we have been looking at an opportunity there and it is pretty
7 much maximized in terms of time. So we have been looking at expanding the area so we
8 have been test fishing outside of the current 101 Bridge down approximately to the
9 Skipanon to the Pier 3 Dolphin line, which is the green line showing currently on the slide
10 screen. We have not been fishing the mudflats but basically this triangle (see map)
11 between Green "3", the Dolphin, and up to Bridge to see what kind of stock composition
12 we have there. We have done if for one year now: spring, summer, and fall.

13
14 Commissioner Anderson said the area that you are test fishing if it were expanded for
15 the fall fishery, is that essentially the alternative Control Zone line being proposed,
16 essentially from the Skipanon to the tip of Pier 3?

17
18 North essentially yes, that is what the test data would sort out. How big an area during
19 what times we could fish but considering that quite a bit of it are mudflats. Yes, it would
20 probably be out close to that line – the mouth of the Skipanon to Pier 3.

21
22 Chair Levy asked for information about the data issues that Liz Hamilton brought up and
23 us not having enough data to make a quantifiable decision on this.

24
25 Kern said historically the way we have done catch estimates for Buoy 10 is in an
26 aggregate. That is one section of the river that we do a separate catch estimate on. We
27 do that with blocks of sections of rivers all the way up to Bonneville Dam in the same
28 general way. We will often go down to the level of how many fish are being caught by
29 boaters or bank anglers depending on the area from each state. He said that is about it
30 within each of those sections we call strata. Getting down into specific areas requires
31 something much more intensive or different than what we have historically done because
32 it is not necessary for an overall catch estimate. So, the numbers we are able to provide
33 the Commission or other folks that are looking for information on these catches, we can
34 give overall catches of Chinook, we can give it by stock because we collect coded wire
35 tags and things. He said getting it down to specific areas has been not a goal of that
36 sampling program because it has not been necessary and so as we move into this, us
37 being able to answer the question how many fish are going to be caught with line x
38 versus line y is always going to be difficult.

39
40 North said there were percentages and numbers mentioned earlier. For the record, he
41 said there are many ways to slice this up fortunately, but it does get a bit confusing. He
42 has data for the Select Area Bright harvest which is the fall Chinook destined for Youngs
43 Bay. He said I don't have as much detail for coho and tule Chinook destined for there.
44 There is a couple of ways to look at it. Of the Buoy 10 Chinook catch what percent are
45 Select Area Brights and over a 13 year time span it has been 9.4%, in the last five years
46 14% of the catch. Another way to look at it is "of the adult return"; that is different. Of all
47 the Select Area Brights returning to the Columbia, how many are harvested in the Buoy

1 10 fishery; about 12%. The third way to look at it is “of the harvestable Select Area
2 Brights”. So, we need to escape some of these fish to maintain our brood stock. You are
3 always going to have some escapement that you just cannot harvest that gets through all
4 the fisheries. When you adjust for that then the sport catch is about 14% of the
5 harvestable Select Area Bright fish returning to the mouth of the Columbia.

6
7 Chair Levy said translate that into actual numbers of fish. North said on average about
8 1,000 Select Area Bright fall Chinook are harvested in the Buoy 10 fishery; that’s over 13
9 years. In the recent couple of years it is about 1,400 or 1,500.

10
11 Chair Levy said for the recreational fishery? North said correct. Chair Levy said what
12 does that go for the commercial? North said looking at some recent data it is about 20%
13 sports and 80% commercial. So, if there were 1,000 fish, Buoy 10 and the commercials
14 would have had 4,000.

15
16 Chair Levy said in the bill itself under Section 3a (3) it says, “At least once every three
17 years, the Commission shall evaluate the impacts and effectiveness of this zone...” She
18 said tell me how you plan on evaluating it and the impacts and effectiveness so that you
19 can bring credible numbers to us so we can make an informed decision.

20
21 Kern said as we have covered that is going to be difficult. Right now we got overall catch
22 data by stock. We could easily come back to you with the information that talks about
23 what the catch was in a given year under the current set of regulations, let’s say it
24 includes the exclusion zone and try to describe for you whether that sport catch of Select
25 Area Brights was more or less than it would have been otherwise. However, the catch of
26 those fish is pretty variable even under regular regulations. He said I am not going to tell
27 you we could have a lot of certainty in telling you the significance of any changes
28 because I am not convinced that we would be able to do that very easily. The variability
29 in catch from year to year might outweigh our ability to detect the difference on that level.
30 There may be some other measures we could take to do more intensive monitoring. He
31 said those would be intensive measures that we would be taking from this point forward
32 and they are not intensive measures we took prior to the implementation. So what is our
33 basis for comparison at that point becomes difficult.

34
35 North reaffirmed that it can be extremely hard to monitor and sort out the specific effect
36 of this specific action. There are so many large scale variables going on that it will be
37 challenging. He said he mentioned earlier the sharing of the Select Area Brights; that is
38 because we do a complete run reconstruction for that stock. We do not even do that for
39 coho. We could not even do that right now for the coho; that is a significant amount of
40 work and we would not even have a base line to go off of.

41
42 Chair Levy said you are told by this SB 830 that you have to do just that in order for the
43 Commission to make an informed decision. In three years I won’t be here but my name
44 went on the original stuff so the importance to me, as Chair of the Commission, is that
45 we know as a Commission right now how you are going to inform us so we can make an
46 educated decision on whether that boundary line needs to be moved, smaller, or bigger.
47 She said you have to do that because they are telling you at least once every three years

1 you have to do that. I am probably going to ask that you give us an update at the end of
2 the year along with all the other updates you are expected to give us regarding the
3 Lower Columbia River fishery. Chair Levy said you have to tell us and figure it out.
4

5 Chair Levy said can we do this by temporary rule for another month so they can come
6 back and tell us how they are going to do this?
7

8 Legal Counsel Sanders said the temporary rule can go for 180 days as a technical
9 matter.
10

11 Commissioner Akenson said she does not feel like the Commission needs to have that
12 answer within the next month. I think that as long as staff is going to provide that for us
13 when we have our annual update that is appropriate. She said I am not worried that they
14 cannot come up with anything, so I don't think we should delay this because of that.
15

16 Chair Levy said she was fine with not delaying it. She was just real certain that the
17 Commission needed the answer of how staff was going to keep the Commission
18 apprised of the information.
19

20 Kern said staff will do their best. I was trying to characterize our current status of what
21 we know now and what is in place right now. There may be some other options that we
22 will have to get creative with. We have not been able to spend a lot of time thinking about
23 and we are running full steam on all the other components of the overall reform package
24 itself. There has been a lot coming fast and we have a lot of catching up to do. We can
25 work on this issue. Kern said if the Commission would like staff to provide you an in
26 person or written update on what our thoughts are we can certainly do that. If you want it
27 to be it before August or before this actually takes effect for your comfort in making your
28 decision that is fine, whatever the Commission prefers we will do our best on.
29

30 Commissioner Anderson said to reiterate, the way she reads Section 3a(3), towards the
31 end of that paragraph is that "...the Commission shall evaluate the impacts and
32 effectiveness of this zone and make adjustments, including the removal of the prohibition
33 described in this subsection, as necessary to meet the objectives described in
34 subsection (1)...". We have very clear harvest guidelines and economic objectives set
35 forth. If we find in a year, two years, three years that the commercial economic
36 objectives are being met for either sports or commercial, I think that that would be an
37 indicator that perhaps the Control Zone should be decreased. And vice versa, if the
38 commercial objectives are not being met then we continue to use these tools. I feel
39 comfortable moving forward at this juncture recognizing that we do have objectives set
40 forth to evaluate not necessarily every single component but how the overall package is
41 working as a whole.
42

43 Chair Levy said she was fine with that. I have to make sure that it is going to work and
44 we got the numbers to make a decision whether we are going to go larger or smaller in
45 the future. We have to have an idea. She said she would like an update when staff has
46 an opportunity.
47

1 Commissioner Wolley said in terms of the catch, the recreational fishery guides versus
2 the small boats, there was one statement made earlier that guides take most of the fish.
3 What does that mean in numbers? We are also getting reports on the number of boats.
4 They move around, it shifts during the day, but some are saying it is a handful and some
5 are saying it is a lot of them. How would you characterize that?
6

7 Kern said in regards to guide catches versus regular angler catch, we are not currently
8 breaking that estimate down at that level for salmon fisheries and Buoy 10. What we do
9 instead is focus on making sure that we get a representative sample of both groups. We
10 do that to insure that if there are differences in catch rates between a guided trip and a
11 non-guided trip that we have factored them in appropriately at the right weight in the
12 overall estimate. We are not currently stratifying the estimate down to specifically guide
13 catch, we might say versus non. He said it is really hard for us to do that and provide a
14 number.
15

16 North said in terms of the second question what kind of effort there is here, the numbers
17 are all correct because it does change throughout the day. It depends on which way the
18 wind is blowing. It is going to blow from the west; that is a given. It will blow from the
19 northwest which is predominate or occasionally it will blow from the southwest. Anytime
20 it is west or southwesterly this area is calmer, but so is in front of Hammond mooring
21 basin and in front of Warrenton Fiber and that whole southern bank will be calmer. The
22 Washington side will be rough. Most of the time the predominate wind in the summer is a
23 northwesterly. In the afternoon particularly if the tide starts going out and the wind and
24 the tide are opposing each other it will get quite rough out here. People will either head in
25 or on their way in will say they made it across the channel and will try it here for a few
26 passes. North said you could have a few boats there in the morning and then in the
27 afternoon there might be a hundred boats; it depends on the day. In general a higher
28 percentage of the effort at Buoy 10 will be closer to Youngs Bay early in the season then
29 later. The percentage drops because it does not have the attraction compared to the big
30 runs in the river.
31

32 Commissioner Wolley said he has been looking at the blue line from Warrenton Fiber to
33 the Dolphin statue. He said Captain Samuels talked about the enforceability of these
34 different lines. The green buoys are probably the most enforceable, the most
35 straightforward. But there does seem to be a fixed point there. He said the blue line
36 seems to be potentially a good compromise line. He listened to the testimony of the folks
37 about the concentration of fishing there around the mouth of the Skipanon. Also, a
38 gentleman talked about the folks in Warrenton that pull their boat and fish right there. He
39 looks at that line as being able to accommodate very localized recreation. It also
40 provides a line of sight in terms of enforceability. This is his observation regarding a
41 compromise line to address some of the concerns of recreational fishing there but still
42 provide the bulk of the exclusion zone that is originally proposed.
43

44 Commissioner Akenson said we don't have all the information about why the Department
45 choose the line they did. She preferred to leave that as the Commission's designated
46 boundary.
47

1 Commissioner Webber said he can't go with the staff recommendations because it
2 exceeds the legislation and our direction. He said on the slide showing the green line
3 from the Dolphin to the mouth of the Skipanon would in his opinion fit the description of
4 "at the mouth of Youngs Bay". He said he can see Commissioner Wolley's position on
5 the blue line and he could go with that but he does not agree with the staff
6 recommendation or any line that involves the use of the green buoys because that is
7 outside of Youngs Bay.

8
9 Commissioner Anderson said she supports staff's recommendations and she hears what
10 Commissioner Webber's concerns are but she is placing her faith in Legal Counsel in
11 terms of interpreting the Legislative intent in a way that gives us the latitude to make
12 that decision. I also, with Commissioner Wolley, understand the desire to look for a
13 potential compromise line, however short of permitting, installing, and maintaining
14 additional buoys on behalf of the Department, I did not get the understanding that that
15 would be feasible. I would not be inclined to go down that road when we have an existing
16 boundary that would work.

17
18 Chair Levy said she agreed with Commissioners Anderson and Akenson.

19
20 *Action: Commissioner Anderson moved to adopt the draft administrative rules*
21 *proposed by staff in Attachment 3 relating to the prohibition of angling in the*
22 *Youngs Bay Control Zone (Clatsop County). Effective Date would be upon filing*
23 *with the Secretary of State.*

24
25 Legal Counsel Sanders said point of order, the staff had proposed the addition of three
26 words on line 9 (see Attachment 3 – Draft Oregon Administrative Rules) to make it "...the
27 **center of the** Astoria-Megler Bridge abutment...":

28
29 *Commissioner Anderson added to her motion: and adding the three words to line*
30 *9 in OAR 635-023-0140 "...to the **center of the** Astoria-Megler Bridge*
31 *abutment..." Commissioner Akenson seconded the motion. Chair Levy took*
32 *individual votes by each Commission member. Commissioner Wolley voted no.*
33 *Commissioner Akenson voted aye. Commissioner Webber voted no.*
34 *Commissioner Anderson voted yes. Chair Levy voted yes. The motion passed by*
35 *a three to two vote.*

36 37 **OTHER BUSINESS**

38 Director Roy Elicker announced that the Oregon Department of Administrative Services
39 has just closed all state agencies and offices due to the ongoing snow storm.

40 41 **2014 Commission Meetings.**

42 Director Elicker said staff is asking to make changes to the Commission's meeting
43 locations for the rest of the year to save travel money. He asked the Commission to
44 approve the following proposed changes:

- 45 • March 7 meeting in Tigard; change location to Salem Headquarters (HQ).
- 46 • April 25 meeting in Newport; change location to Salem HQ.

- 1 • December 7 meeting in Portland; change to a teleconference meeting at Salem
2 HQ to prevent people from traveling in winter conditions.

3 Director Elicker said in 2015, staff would look at those areas not visited this year.
4

5 Commissioner Webber asked if this schedule met the Commission's requirements in
6 terms of congressional districts. Legal Counsel Sanders said assuming that Medford
7 and North Bend are in the same congressional district. Commissioner Webber said they
8 are not. Medford is in Congressman Walden's district and Coos Bay is in Congressman
9 DeFazio's congressional district. Legal Counsel Sanders said we still need to hold a
10 meeting in the Second Congressional district. Commissioner Webber said that area also
11 includes Corvallis and certainly Eugene.

12
13 Deputy Director Curt Melcher suggested that staff take a closer look at the April 25
14 meeting in North Bend rather than decide today.

15
16 Director Elicker agreed and asked the Commission to at least approve the
17 teleconference meeting on December 7th and change the March location to Salem HQ.
18

19 *Action: Commissioner Akenson moved that the Commission accept the changes*
20 *in their meeting schedule as written in this February 7, 2014 update and with the*
21 *exception that staff will confirm that the April 25 meeting location will be*
22 *appropriate for the distribution of meetings the Commission needs each year in*
23 *the different congressional districts. Commissioner Webber seconded the motion*
24 *and the motion passed unanimously by a vote of five.*

25
26 Chair Levy handed Director Elicker a certificate and said the Oregon Department of Fish
27 and Wildlife would like to recognize him in appreciation for 20 years of service to the
28 State of Oregon; effective November 2013.

29
30 **ADJOURN**

31 Chair Levy adjourned the meeting at 11:30 a.m.