



Oregon Fish and Wildlife Commission Minutes

Meeting:
Friday, January 10, 2014 - 8:00 a.m.
Oregon Department of Fish and Wildlife
Commission Room
4034 Fairview Industrial Drive S.E.
Salem, Oregon 97302

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2 *Commission minutes are considered draft until approved by the*
3 *Commission at its next meeting.*
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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

Michael Finley, Acting Chair	Roy Elicker, Director
Bob Webber, Commissioner	Debbie Colbert, Deputy Director
Holly Akenson, Commissioner	Anika Marriott, Assistant Attorney General
Gregory J. Wolley, Commissioner	Teri Kucera, Executive Assistant
Laura Anderson, Commissioner	

8 **MEETING**

9 On Friday, January 10, 2014, Acting Chair Mike Finley called the Oregon Fish and
10 Wildlife Commission (the Commission) meeting to order at 8:00 a.m. He said Chair
11 Bobby Levy is unable to attend due to illness today so she is excused. Commissioner
12 Wolley is on his way to the meeting. Acting Chair Finley said the meeting would not be
13 video streamed due to technical difficulties.
14

15 **DIRECTOR'S REPORT**

16 Director Elicker said the Commission is moving to written Field Reports. A few of the
17 Region Managers were in the audience if the Commission did have any questions.
18

19 **Expenditure and Budget Report**

20 Debbie Colbert, Deputy Director for Administration, distributed her Financial Report as of
21 November 30, 2013. Department wide, revenues and expenditures are within budgeted
22 projections. She said the agency is experiencing cash flow issues; this is the last
23 biennium of our last fee increase. Staff is addressing expenditures through administrative
24 restrictions, implementing efficiency measures agency wide, and possibly implementing
25 early the reductions planned for 2015-17. For revenues, the agency is transitioning to a
26 new billing system that will speed up invoicing of federal and other agencies for contract
27 work and will track payments to insure timely payment. Staff is discussing with federal
28 agencies our concerns about aging receivables and payments due.
29

30 **Adopt Temporary Rules**

31 Director Roy Elicker asked the Commission to adopt the five temporary rules in the tan
32 agenda on pages 1 and 2, starting with OAR 635-011-0100 through OAR 635-023-0095.
33
34

1 **1. 635-011-0100**

2 **Radio-Tagged Hatchery Winter Steelhead May Be Retained in Northwest Zone**
3 **Streams**

4 Adopted December 2, 2013: effective December 10, 2013 through June 8, 2014.
5 This amended rule adds radio-tagged hatchery steelhead in Northwest Zone streams to
6 the existing exception to non-retention of radio-tagged fish (Item 17, page 10, of 2013
7 Oregon Sport Fishing Regulations, and page 11 of 2014 Oregon Sport Fishing
8 Regulations). Rule modifications allow retention of radio-tagged fish in conjunction with
9 a planned radio telemetry study in the North Fork Nehalem River. This amended rule
10 encompasses the entire Northwest Zone due to the possibility that some radio-tagged
11 hatchery winter steelhead may stray into adjacent basins.
12

13 **2. 635-004-0275**

14 **Federal Actions and Management Measures Implemented for Commercial Fixed-gear**
15 **Groundfish Fisheries**

16 Adopted December 3, 2013: effective December 9, 2013 through June 7, 2014.
17 This amended rule implements in-season actions previously adopted by the federal
18 government for 2013 and 2014 Pacific Ocean commercial groundfish fisheries, including
19 but not limited to changes in limited entry and open access fixed gear sablefish trip limits.
20

21 **3. 635-005-0705**

22 **Prior Year 5,000 Pound Landing Requirement Temporarily Removed from Brine Shrimp**
23 **Permit Renewal Rule**

24 Adopted December 5, 2013: effective December 9, 2013 through June 6, 2014.
25 This amended rule allows the renewal of Brine Shrimp permits without the previously
26 required 5,000 pound landing from the previous year. Due to low water in Lake Abert in
27 2013 harvesters were unable to use their boats and harvest enough Brine Shrimp to
28 satisfy the 5,000 pounds in landings required for permit renewal.
29

30 **4. 635-004-0505**

31 **2014 Harvest Quota for Commercial Roe Herring Fishery in Yaquina Bay Set**

32 Adopted December 10, 2013: effective January 1, 2014 through April 15, 2014.
33 This amended rule sets the 2014 harvest quota for the Yaquina Bay commercial roe
34 herring fishery for the period from January 1 through April 15, 2014 at 43.4 tons. The
35 yearly harvest quota for the Yaquina Bay commercial roe herring fishery shall not exceed
36 20% of the available spawning biomass as established in the *Yaquina River Basin Fish*
37 *Management Operating Principles and Objectives* described in OAR 635-500-0665(2).
38 Only fishers with a limited entry permit issued pursuant to ORS 508.765 may participate
39 in this fishery.
40

41 **5. 635-023-0095**

42 **Recreational Sturgeon Fishery in the Bonneville Pool Begins January 1, 2014**

43 Adopted December 11, 2013: effective January 1, 2014 through January 31, 2014.
44 This amended rule opens a recreational white sturgeon fishery in the Bonneville Pool of
45 the Columbia River, including adjacent tributaries, effective at 12:01 a.m., Wednesday,
46 January 1, 2014. White Sturgeon between 38-54 inches in fork length may be retained.

1 Modifications were made consistent with Joint State Action taken December 11, 2013 by
2 Columbia River Compact agencies of the states of Oregon and Washington.

3
4 *Action: Commissioner Webber moved to adopt administrative temporary rules 1*
5 *through 5 as listed on the agenda. Commissioner Akenson seconded the motion,*
6 *and the motion carried unanimously by a vote of five.*

7
8 **PUBLIC FORUM**

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

<p>12 Bob Rees n/a</p>	<p>Bob Rees, President of NW Guides and Anglers Association (NWGAA), said our membership was not in consensus about a move to advocate for another consumptive sturgeon opportunity but the vast majority of fishing guides and charter operators that fish in the Lower Columbia River (LCR) were supportive of the possibility of another consumptive fishery on the LCR. The opportunity provided by the Commission in 2013 enabled numerous businesses to take in much needed revenue to jumpstart their summer season. After reviewing the keeper population estimates for this year and seeing a large jump in the estimated population of keepers, NWGAA is pleading for a limited opportunity to harvest a very small percentage of this population that supports a very rural area in Oregon.</p> <p>These fish are the backbone of their annual income so the loss of this fishery will be devastating to many. Conservation is their number one priority; they helped develop the LCR white sturgeon conservation management plan and believe in its merits. He said if this species continued its downward decline they would support its closure but population estimates have nearly doubled in the last two years. They feel it is due to this species populating other areas of the Pacific Northwest when smelt returns plummeted and high spring flows kept anchovies out in the ocean for longer periods of time. Last year, they had a successful keeper sturgeon season that closed 10 days early because of high catch rates.</p> <p>Rees said Oregon and Washington do not manage sport or commercial fisheries in the same manner that sturgeons are currently looked at. They hope the Commission will look at this and determine, through staff, that a minimal harvest on LCR white sturgeon will not compromise their recovery which seems to already be underway. Adaptive</p>
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	management is key to the socio-economic needs of natural resources. NWGAA hopes the Commission will exercise that strategy in this case.
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Commissioner Wolley arrived at the meeting.

<p>Jim Myron Canby, Oregon</p>	<p>Jim Myron, representing Native Fish Society (NFS), distributed information and the <i>Independent Panel Review of the Oregon Fish & Wildlife's Draft Coastal Oregon Salmonid Conservation & Management Plan</i> commissioned by Steamboaters & Native Fish Society. He said when they saw the release of the draft public comment plan and the schedule for public hearings scheduled to begin next week, NFS wanted the Commission to have this science review of the plan earlier rather than later. In the packet:</p> <ul style="list-style-type: none"> • Copy of the report that the scientists they hired to review the plan actually completed. NFS shared it with ODFW. • Summary of the key points in the plan that will be helpful for reviewers of the plan. • Document that compares some of the conclusions of our science report with the report done by the State's independent science team. We have shown where the common concerns are in both science reviews. • Copy of letter to the Governor with this packet so he is kept in the information loop. <p>Myron said given the short timeframe proposed in a recent press release NFS is asking:</p> <ul style="list-style-type: none"> • The Commission has input into this process earlier rather than later but not the same involvement as in the LCR harvest allocation. The conservation issues relative to wild fish are more critical in the coastal salmon plan than they were in the harvest allocation plan; that really wasn't a conservation plan. The coastal thing is supposed to be a conservation plan but our scientists have determined it is a fishing plan and a hatchery management plan. • For a longer public comment period of 60 or 90 days rather than the 30 day period. • When the next draft of the plan comes out, NFS encourages staff to have response comments included as part of the next or final draft so the public can be assured that you have taken the comments from the science community and public seriously and you have responded to them either by including them in the next draft or if you don't say why.
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2 Commissioner Webber said your scientists were using our numbers or data and came to
3 a somewhat different conclusion? Or were there numbers that your people got that were
4 different than ours? Myron said he was not sure; he was not that intimately involved with
5 the science team and the development of their report. He read the report but could not
6 say where the numbers came from and whether they were different.
7

8 Commissioner Webber said you submitted this information and the general public is
9 going to attend some of these meetings to comment. Why would it take more than 30
10 days for them to then get a letter reiterating their comments? Myron said what I gave
11 you today does not represent NFS's comments on the plan; it is the information our
12 scientists provided to us that we want to share with you. We will review the draft plan
13 that came out last weekend and prepare our formal response to the agency but those
14 won't be ready for the public hearing scheduled in Salem next week. For people to
15 review this document it's an extensive plan and it seems like too short a timeframe.
16

17 Commissioner Webber said you want more time to digest the plan and not 30 days more
18 to write your comments? Myron said yes. We need to understand what is in the plan
19 and what has changed since the earlier draft and what is missing from our perspective.
20

21 Director Elicker said the Department is using an extensive public process with
22 stakeholder groups and others.
23

24 **Exhibit A: COMMISSION MINUTES**

25 Chair Finley asked the Commission to reapprove the June 7, 2013 minutes due to a
26 typographical error. In public testimony for Exhibit E: 2013-2014 Big Game Regulations
27 (pages 13-14) the words "**crossbows in**" needed to be inserted in Mr. Thompson's first
28 sentence so it would read, "TAO is opposed to **crossbows in** archery only seasons."
29

30 *Commissioner Akenson moved to correct the minutes and adopt the change as*
31 *described for the June 7, 2013 minutes. Commissioner Webber seconded the*
32 *motion and the motion passed unanimously by a vote of five.*
33

34 Acting Chair Finley asked for edits to the draft October 4, 2013 minutes.
35

36 Commissioner Akenson referred to the Northeast Region Field Report, line 23, page 1,
37 and said "radar range" should read "**bombing range**".
38

39 Commissioner Anderson referred to page 24, line 10, and said it should read "The
40 motion carried by a **majority** vote of five" and not "...unanimously by a vote of five."
41

42 Commissioner Wolley said on page 38, line 32, a word is omitted in the phrase "...and
43 asks us to that wording out..." It should read, "...and asks us to **take** that wording out...".
44

1 Commissioner Akenson said on page 33, in public testimony by Rich Thompson it states,
2 "...ODFW could potentially be sued by ADA and Pittman Roberts and funds could be cut
3 off." It should read "...Pittman **Robertson** funds...".

4
5 *Action: Commissioner Webber moved to approve the October 4, 2013*
6 *minutes as amended. Commissioner Anderson seconded the motion and*
7 *the motion carried unanimously by a vote of five.*
8

9 **Exhibit B: RESTORATION AND ENHANCEMENT PROJECT APPROVALS**

10 Kevin Herkamp, Restoration and Enhancement (R&E) Program Coordinator and Salmon
11 and Trout Enhancement Program Coordinator, presented three projects recommended
12 for funding by the R&E Board at their November 15 meeting in Coos Bay. He said these
13 projects include improving fish passage on the Clatskanie River, engineering design
14 work on the Town Lake Outlet Structure, and adding shelter for volunteers and staff who
15 fin mark fish at the Rhoades Pond facility. Herkamp said the low number of projects this
16 cycle is due to a decision to limit applications to those restoration projects that were of
17 urgent nature in order to facilitate transition from a combination of the STEP and R&E
18 Programs. Recommendations total for this cycle is \$60,100. If all of these projects are
19 approved by the Commission, \$2,552,868 of the \$4,642,000 limitation will remain.
20

21 **Public Testimony:** No public testimony.

22
23 *Issue 1 Action: Commissioner Akenson moved to approve the*
24 *recommendations of the Fish Restoration and Enhancement Board for*
25 *project funding. Commissioner Wolley seconded the motion and the*
26 *motion carried unanimously by a vote of five.*
27

28 Herkamp said R&E Board members are appointed by the Commission. Each board
29 member can serve two four-year terms. Currently, a Sport Fishing position on the Board
30 is ending its first four-year term. Staff asks the Commission to re-appoint Bob Bumstead.
31

32 *Issue 2 Action: Commissioner Webber moved to re-appoint Robert*
33 *Bumstead to the R&E Board. Commissioner Akenson seconded the*
34 *motion and the motion carried unanimously by a vote of five.*
35

36 **Exhibit C: WARMSPRINGS DAM HYDROELECTRIC PROJECT FISH SCREENING**
37 **EXEMPTION AND FISH PASSAGE WAIVER**

38 Rick Kepler, Manager of the Water Quality/Quantity Program, introduced Elizabeth
39 Moats, Northeast Region Hydropower Coordinator, and provided background for the
40 Warmsprings and Mason Dams during a slide presentation. He said these two projects
41 are indicative of a set of projects expected to come before the Commission in the future,
42 and are the result of encouragement in the development of renewable energy sources at
43 the state and federal level. These proposed hydroelectric facilities add a hydroelectric
44 turbine to an existing dam. A lot of existing federal dams are owned by Bureau of
45 Reclamation (BOR) or U.S. Corp of Engineers (COE). The proposed hydroelectric
46 facility relies on existing flows so they do not change the existing flow patterns of the

1 dam. They do not try to maximize hydroelectric generation but are an add-on that
2 provides additional electrical generation and revenue for the facility.

3
4 Kepler said these facilities require a Federal Regulatory Energy Commission (FERC)
5 license and an Oregon water right. Staff will negotiate the sub-agreements and present
6 them to the FERC Licensing Board for approval. FERC uses those as conditions in the
7 license. These are before the Commission today because the new hydroelectric use
8 requires a new water right under Oregon laws that would allow Oregon Department of
9 Fish and Wildlife (ODFW) to initiate their screening and passage requirements.

10
11 Elizabeth Moats said ORS 498.306 requires screening or by-pass devices at any water
12 diversion at which fish are present, and allows the Commission to grant an exemption
13 from fish screening when other provisions are made that are protective of fish and
14 approved by the Commission. ORS 509.585 requires fish passage at artificial
15 obstructions, defines trigger actions, and allows for waivers granted by the Commission.
16 Trigger actions include a fundamental change in permit status which is defined as a
17 license or new water right; both are required at these hydro projects. Statute and rule
18 both define the allowances for a waiver from fish passage requirements if the mitigation
19 provides a net benefit to native migratory fish.

20
21 *Warmsprings Dam Hydroelectric Project.* Moats said Warmsprings Irrigation District
22 (WID) applied to FERC to construct a hydroelectric project on Warmsprings Dam (WD)
23 on the Malheur River. WD forms the Warmsprings Reservoir and is owned by WID and
24 BOR. It is operated for irrigation and flood control. The irrigation season runs April 15 to
25 October 15; outside the irrigation season there is no minimum flow. The proposed project
26 will install a turbine on WD's outlet to utilize irrigation flows. WID is not proposing to
27 change current operations for the project. Currently there is no fish passage or screening
28 facilities at WD.

29
30 Moats said since there is no minimum flow outside of the irrigation season the river
31 channel is dewatered downstream of WD from October to April. It remains dry for 3.8
32 miles down to the confluence with South Fork Malheur. Downstream of WD the Malheur
33 is heavily diverted for irrigation creating passage barriers and poor fish habitat. About
34 120 miles downstream of WD the Malheur runs into the Snake River. Eighty miles
35 downstream of the confluence the Brownlee Dam forms the upper most dam in the Hells
36 Canyon Hydroelectric Complex, which does not have fish passage and is a barrier to all
37 anadromous fish in the Snake River. Only resident fish species are present in the
38 Malheur River.

39
40 Moats said upstream of WD the reservoir is managed by ODFW for game fish. Poor
41 water quality in the reservoir limits hatchery trout growth and reproduction due to high
42 summer temperatures, high turbidity, and water level draw down making it inhospitable
43 for native salmonids. The general habitat condition of the Malheur upstream of the
44 reservoir is split into two sections. From the reservoir for 30 miles to the confluence with
45 Wolf Creek the habitat is in poor condition due to land management practices and poor
46 water quality and quantity and high summer water temperatures. Upstream of the

1 confluence with Wolf Creek to the headwaters on the Malheur National Forest the habitat
2 is good and supports populations of redband trout and bull trout.

3
4 *Screening Exemption Proposal.* Moats said in lieu of screening WID proposes to provide
5 the Warm Springs Reservoir stocking program with \$3,000 per year with three percent
6 annual adjustments through the life of the FERC license. If there are surplus funds, they
7 would be used for habitat enhancement projects in the basin. Staff determined that the
8 primary impact of not having screens at WD is that hatchery rainbow trout will continue to
9 be entrained through WD. ODFW stocks an average of 36,000 fingerling rainbow trout
10 per year. The average annual cost is about \$3,700, so the proposal will offset the cost of
11 stocking fish by about 80%. Staff believes the funding proposal is adequate to protect
12 the rainbow trout fishery in Warm Springs Reservoir. Moats said on October 23, the Fish
13 Screening Task Force (FSTF) reviewed this proposal and voted to support the exception.
14

15 Commissioner Akenson said looking at the numbers of different species in the reservoir
16 it seems the trout are not doing well because of the warmwater fish. Do you propose any
17 other changes besides putting fingerlings in there for trout fishing? Moats said ODFW
18 occasionally stocks warmwater species in the reservoir but would not discontinue
19 stocking of rainbow trout fisheries. The status of the fisheries there is a result of the
20 management of the reservoir through the dam.

21
22 Commissioner Akenson asked if the exemption would give WID the possibility to do
23 something different in 10 or 20 years if there was a different management direction for
24 the reservoir fisheries other than purchasing and introducing fingerlings into the dam.
25 Kepler said the warmwater fishery is doing fine. The reservoir goes from full pool down to
26 minimum pool every year. The water quality for the trout fishery is poor so it is a "put and
27 take" fishery. In the agreement if we don't use the mitigation funds for stocking we can
28 do mitigation upstream.

29
30 Commissioner Wolley said the proposal states that the insulation of screening would be
31 prohibitively expensive. What would the screening cost be if you were to follow that
32 mitigation? Moats said an estimate was not provided by the project proponents.

33
34 Commissioner Wolley asked if there was a model or projection of how many fish would
35 be entrained in the project. Moats said the project proponents provided an entrainment
36 report with estimates (a literature review based off of other regional reports), and there
37 were on-site field studies provided by the project proponent that we did not agree
38 adequately sampled the entire fishery in the reservoir.

39
40 Commissioner Wolley asked how many fish are projected to be entrained versus the
41 number of fish you are proposing to stock. Moats said the impact of not screening the
42 intake is that stocked hatchery trout will continue to be entrained, the primary fishery we
43 manage in the reservoir. We will replace the fish we are interested in by up to 80%. It
44 would provide adequate protection for fish as required by state statute.
45

1 Director Elicker asked Elizabeth to explain “entrainment”. Moats said it is a term used to
2 describe a fish or other material moving through the dam; when something moves into a
3 conduit and through the dam that is considered entrainment.
4

5 *Passage Waiver Proposal.* Moats said under administrative rule, passage is required at
6 artificial obstructions when native migratory fish were historically or are currently present.
7 Historically, the Malheur supported runs of summer steelhead and spring chinook but
8 these species are no longer present at and downstream of WD due to the Hells Canyon
9 development and other obstructions. Upstream of WD these species would have been
10 extirpated in 1919 when the dam was constructed. Native migratory fish present include
11 suckers, northern pikeminnow, redband trout, bull trout, and mountain whitefish.
12

13 *Proposed Mitigation.* Moats said WID filed a fish passage waiver in November. In lieu of
14 passage, WID proposes to improve passage conditions at an irrigation diversion that
15 currently forms a fish passage barrier located 39 miles upstream of WD, and to replace
16 this existing push-up dam with a permanent diversion structure. Proposed improvements
17 include:

- 18 • Installing a headgate to regulate water into the Diversion ditch.
- 19 • Installing a permanent rock wing dam diversion in place of the push up dam to
20 provide a head in order to withdraw water and provide fish passage around the
21 diversion.
- 22 • WID will work with ODFW to ensure fish passage criteria are met in the design
23 and construction of the structure.
- 24 • WID will provide maintenance of the structure for the life of the hydro project.
25

26 *Net Benefit Analysis.* Moats said if passage at WD was installed under current
27 conditions, passage would most likely be used by native suckers and northern
28 pikeminnow. Both populations are viable and self-sustaining upstream and downstream
29 and spawn in late spring or the summer so they could migrate during the irrigation
30 season when flows are released from WD. They could use passage facilities if properly
31 designed but this would not increase their distribution. Passage at WA will allow
32 interaction among groups currently assumed to be separate which could increase the
33 genetic diversity of the populations and improve productivity and abundance by allowing
34 downstream fish access to upstream habitats and vice versa. Redband trout have not
35 been confirmed in the reservoir or downstream. Mountain whitefish and bull trout would
36 not benefit from passage at WD because of their distribution.
37

38 Moats discussed the benefits of the proposed mitigation:

- 39 • Suckers, pikeminnow, mountain whitefish, redband and bull trout will benefit; their
40 spawning migrations are currently blocked by the push up dam. Mitigation will
41 improve passage during spawning and improve spawning success.
- 42 • Redband trout. Current structure is a partial barrier during spawning migration;
43 can delay migration and limit access to good habitats. Permanent structure will
44 ensure passage during spawning and improve spawning success.
- 45 • Bull trout. Push up dam located in lowest extent of current distribution. Removal of
46 passage barrier could increase distribution and expansion into new habitats.

- 1 • Fluvial bull trout. Produce more offspring. By allowing longer migration the
2 mitigation has potential to increase bull trout productivity.
- 3 • Installation of headgate will protect fish instream when water not diverted.
- 4 • Permanent structure will eliminate annual instream disturbance reducing
5 sedimentation and erosion.

6
7 Moats said staff compared the benefits of passage to benefits of the mitigation proposal:

- 8 • Will benefit conditions for all migratory species present versus passage at WD.
- 9 • Will improve passage and accessibility within high quality habitat versus habitat in
10 vicinity of dam is poor so potential benefit of passage are limited.
- 11 • Has potential to increase productivity for native migratory species versus passage
12 at WD could only marginally improve productivity due to poor habitat conditions
13 and already occupied habitat for those species tolerant of those conditions.
- 14 • Benefit Bull trout by improving passage and supporting fluvial life history that
15 could increase their distribution and abundance. Bull trout are a threatened
16 species the mitigation action will affect their recovery whereas passage at WD will
17 not affect bull trout.

18
19 Moats said staff concludes the proposed mitigation measures will have a net benefit to
20 native migratory fish over passage at WD. The public process began with the Fish and
21 Screening Task Force (FSTF) who did not provide a joint recommendation. Task force
22 members did provide individual comments that are in the Commission packet. There are
23 other public comments in the Commission packet as well as those distributed today.
24 The WID is seeking approval by the Commission of the Warm Springs Dam screening
25 exemption and the Warm Springs Dam fish passage waiver. Staff recommends the
26 Commission approve both the screening exemption and the fish passage waiver by
27 signing the agreements.

28
29 Commissioner Wolley said what is the timeframe to implement the proposed mitigation
30 measures? Moats said for the fish passage waiver the agreement states that mitigation
31 measures should be implemented before the hydroelectric project is operational but it
32 would be dependent on issuance of the FERC license.

33
34 Commissioner Akenson asked staff to explain the difference between an exemption and
35 waiver. Kepler said we need to break the screening and passage apart.

- 36 • The exemption here is for screening which requires mitigation.
- 37 • There is an exemption and a waiver for fish passage, so the exemption under fish
38 passage states that currently there is no net benefit for providing passage and
39 therefore they are not going to provide mitigation. The Commission will recheck
40 that there is no benefit to passage every seven years.
- 41 • The waiver states there is a net benefit to providing passage; it provides mitigation
42 that is a net benefit to providing passage at WD.

43
44 Director Elicker said we are recommending a waiver for fish passage because the
45 mitigation that has been offered is a much better situation for the fish in the system
46 rather than just making fish passage at the dam.

1
2 Commissioner Akenson said with a waiver there is not a seven year recheck? Once that
3 is decided it continues through the life of the FERC license? Kepler said correct.
4

5 Commissioner Webber said if the water usage at WD changed would that trigger a new
6 evaluation if they suddenly released a lot of water out and there was water from WD to
7 the south fork? Kepler said under this waiver there would not be a trigger to redo
8 anything; it would be under the FERC license.
9

10 Commissioner Webber referred to *Attachment 10 – Draft Fish Passage Waiver*
11 *Agreement*, page 2, Provision 11, and said it states that if, “...mitigation sites are not
12 *functioning as designed, the Department in consultation with the Applicant or*
13 *Landowner, shall determine the cause and, during an in-water work period approved by*
14 *the Department, shall modify the mitigation to rectify problems as necessary.”* He said it
15 does not indicate who pays for that. Moats said it is understood in the agreement that
16 the project proponents would pay.
17

18 Commissioner Webber said that it is not written into the agreement. He would be
19 concerned about that later. Moats said there would be ability to make any necessary
20 changes to make the draft agreement acceptable to the Commission before it is signed.
21 Commissioner Webber said he had problems authorizing the approval of this without a
22 clear indication of who is going to pay for those modifications.
23

24 Commissioner Webber referred to provision 12 and said if there is a breach in the
25 agreement (failure to implement and maintain mitigation) the language refers to allowing
26 “...a mutually agreed upon reasonable amount of time to rectify such violation.” He said
27 the dam owners may have a different concept of what is “reasonable” than we would.
28 Kepler said it depends on why the breach occurred. That term allows for discussion with
29 the dam owners about how to fix it.
30

31 Commissioner Webber said having an open ended concept of what is reasonable in the
32 minds of the parties might let it never happen. Kepler said if we were dissatisfied we
33 would ask FERC to require the owners to fix the problem or shut down the hydro. We
34 could put in a timeframe but if we went over that timeframe then we would have a
35 problem. We could talk to the project proponents to put that into the draft agreement.
36

37 Commissioner Anderson said for the passage, mitigation is required under the waiver
38 and not under the exemption. Is that the same with screening? Kepler said no.
39 Commissioner Anderson said does it work with screening and mitigation. Kepler said
40 you either put screening in, or you ask for exemption to the screening and you provide
41 mitigation in lieu of that screening.
42

43 Commissioner Anderson said if you ask for a waiver from screening is there mitigation
44 required under a waiver? Kepler said you can view the screening exception as a waiver.
45 It is just different terminology because there are different statutes. The screening
46 exemption is similar to the fish passage waiver but there is no waiver on the screening.
47

1 **Public Testimony:**

<p>Nick Josten Vale, Oregon</p>	<p>Nick Josten, for WID, commented on:</p> <ul style="list-style-type: none"> • Responsibility for repairing the mitigation project if it failed would be us. We are very open to changing that language so you are comfortable with it. That was a good faith offer and WID will back that up. • A small project but with definite important benefits to WID. • Will improve reliability and safety of outlet gates on WD. • Roadways into WD will be improved that benefit WID and public access to the site. • Project revenue important to WID to help pay for maintenance of the system; without any change to existing water flows. • From an engineering and economic standpoint these high desert projects in eastern Oregon are fundamentally different than the more common river based projects elsewhere because the dams are high and the water flow is low. Fish screens are expensive because they're tall. The revenue is smaller because water flows are low and only for a portion of the year. Fish passage at one of these dams is a deal killer for a hydro. <p>Josten said the fact that there is a process for reviewing these on a case by case basis is very important to the potential development of these kinds of hydros.</p>
<p>Erica Maltz Burns, Oregon</p>	<p>Erica Maltz, Fisheries Program Manager for Burns Paiute Tribe (BPT), read a statement; highlights follow:</p> <ul style="list-style-type: none"> • BPT's concern is with the fish passage waiver versus the fish passage exemption. • BPT does not have issue with the screening issues. • BPT is a sovereign co-manager of fish and wildlife resources with ODFW and manages approximately 8,000 acres for fish and wildlife habitat on Malheur River. • BPT manages a resident fish project in Malheur River that focuses on implementation of collaborative actions to achieve bull trout recovery. • They have collected extensive data on redband trout and other native species for 15 years. • BPT is committed to restoration of resident fish, anadromous fish, and wildlife populations. • Tribal Council has signed numerous resolutions directing staff to pursue these goals in Malheur River. • Maltz said they hope the Commission has reviewed the comments they submitted on December 6, 2013 upon their review of the draft benefit analysis and passage

waiver application (see *Attachment 13 – Public Correspondence*):

- The 1919 WD and associated water manipulations are primary reasons current conditions are impaired as highlighted in the benefit analysis that is confined to consideration of current conditions.
- Bull trout are above and redband populations are above and below the project. BPT will be a critical component in implementation of these recovery actions in upper Malheur River.
- WID has not made a meaningful attempt to present ODFW with mitigation that would offset 30 to 50 years of waived fish passage requirements. BPT believes WID placed a very small monetary limit on the size of the mitigation project and secondarily considered the value of possible mitigation against 30 to 50 years of lost opportunity for fish passage.
- If FERC license is issued it may last 30 to 50 years. If the Commission signs the waiver, it eliminates ODFW's ability to respond to positive changes and in-stream conditions over that time period. Will severely undermine federal, state, and Tribal efforts to rehabilitate the Malheur and future resident and anadromous fish populations.
- According to U.S. Fish and Wildlife Service (USFWS) connectivity is a primary threat to Malheur bull trout in the final recovery plan. WD is named in the Malheur River Bull Trout Sub-basin Assessment and Management Plan as one of the "most critical challenges facing the Malheur bull trout."

BPT urges the Commission to not sign the waiver and reserve your passage authority by issuing a fish passage exemption. Like the waiver, the exemption would acknowledge that fish passage is not to be implemented at this time. The exemption would allow ODFW to review empirical data on in-stream conditions periodically at multiple points in the FERC license life and allow ODFW periodically to decide whether to require WID to install fish passage or to implement a comparable trap and haul program.

The USFWS recently stated based on this project and long term repercussion to bull trout that it will reserve its authority under Section 18 of the Federal Power Act to reopen the license if issued to review the necessity of implementing fish passage. BPT hopes the Commission will see the value in

	<p>deferring to existing management plans and will take a position consistent with USFWS and the Tribe in refusing to allow another 30 to 50 years to pass without the regulatory ability to require passage at this project.</p> <p>If you choose to approve this waiver today we would consider your long term confinement of ESA to above the project a failure in your obligation in keeping the best interests of Oregon's native species a priority.</p>
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1
2 Commissioner Webber said federal regulatory agencies have the power to come in at a
3 later date and change passage requirements? Maltz said ODFW is in a better position
4 to answer how the state process fits with the FERC process. She understands that
5 USFWS can still choose to reserve its authority to reopen the FERC license if issued and
6 they have indicated they will do so. There are not many precedents for reopening a
7 license so we feel the state process could be more adaptive and efficient in that matter.
8

9 Commissioner Webber said you envision this working if the Commission gave an
10 exemption instead of a waiver and then every seven years we look at it again? Maltz
11 said every seven years you have the opportunity to review whether the changes, current
12 conditions, and emerging data on fish use of the area would warrant fish passage. We
13 are undertaking large efforts to recover native species in the Malheur and expect that
14 over a FERC license life there will be some substantial changes to fish populations.
15

16 Commissioner Webber said if we did what was proposed and gave a waiver, the USFWS
17 could come back with fish passage in the future if conditions warranted? Maltz said yes.
18

19 Commissioner Wolley said issuing a waiver would only prevent ODFW from being able
20 to monitor conditions or fish populations in the Malheur? Maltz said yes. It will be more
21 challenging for the federal authority to reopen the license and implement fish passage.
22 Whereas, with the state process there is already a placeholder to review every seven
23 years the conditions; that is more appropriate for this project.
24

25 Acting Chair Finley said Steve Sanders, Senior Assistant Attorney General, was unable
26 to join the Commission today but Anika Marriott, Assistant Attorney General, has joined
27 us. He asked her to explain the difference between a waiver and an exemption.
28

29 Legal Counsel Anika Marriott said to clear up this distinction she will make three
30 clarifications:

- 31 1. To clarify that there are two items before the Commission today for its approval: A
32 Fish Passage Waiver and a Fish Screening Exemption.
- 33 2. This is where the confusion is, there is within the Fish Passage Division 412 rules,
34 OAR 635-412-0025, the option for the Commission under certain circumstances
35 to grant to a Project owner or operator an exemption from the fish passage rules
36 or in other circumstances a waiver.
- 37 3. While there is only a slight difference between the two terms as a general matter,
38 legally, the fish passage rules differentiate between the two options both in terms

1 of what the Commission must find to grant one versus the other as well as what
2 reopeners are available once granted.
3

4 Legal Counsel Marriott said that we are all getting confused naturally because there is a
5 very subtle distinction between a waiver and an exemption in general terms; however,
6 here an exemption under 635-412-0025 may only be granted if the Commission
7 determines that the lack of fish passage has been effectively mitigated, or operator has
8 received a legal waiver, or there is no appreciable benefit of providing the fish passage.
9 You may grant an exemption in those cases. And if under one of those circumstances,
10 you do grant an exemption then you will be able to review whether that exemption is
11 appropriate at any point, because the exemption only continues for so long as the
12 original benefit of the mitigation is maintained. However, what we were discussing is the
13 net benefit analysis that is required to make the decision before you today, relevant to
14 granting of a waiver.
15

16 Legal Counsel Marriott explained that what is now before you is a waiver. A Fish
17 passage waiver is granted if you determine mitigation other than fish passage proposed
18 by the person provides a net benefit. So, if you determine right now based upon the
19 information before you regarding the conditions as they exist today that mitigation rather
20 than fish passage provides a net benefit to native migratory fish, then this waiver is
21 appropriate and waiver would exist as long as they are fulfilling their mitigation
22 agreement or an event triggers your review, such as a fundamental change in permit
23 status, or further construction, or abandonment.
24

25 Director Elicker distributed a copy of *ORS 498.316 - Exemption from screening or by-*
26 *pass devices* and *OAR 635-412-0025 - Fish Passage Waivers and Exemptions* so it was
27 clearer if the Commission wanted to grant a waiver or exemption with regard to passage.
28

29 Acting Chair Finley said could you grant an exemption and still require the mitigation?
30

31 Legal Counsel Marriott said the only thing before the Commission right now is the waiver
32 and whether you approve that waiver or not. The Commission may certainly postpone
33 that decision and if you would like the staff to review whether an exemption would be
34 appropriate, then this could take place.
35

36 Commissioner Anderson referred to the screening mitigation proposed under the
37 passage waiver and asked how closely tied the mitigation has to be to screening or
38 passage. For example, the kind of mitigation that is being proposed for passage would
39 that also be considered appropriate as mitigation under the screening exemption?
40

41 Legal Counsel Marriott said mitigation may be very similar in certain instances. ODFW
42 does have sufficient discretion now for what would appear to be very similar mitigation
43 under either case. In this instance the mitigation that is proposed for this screening is tied
44 to the entrainment and what would be affected and is now being funded to replace that.
45 Likewise under the passage waiver the mitigation is changing a current barrier that
46 currently is blocking fish passage to allow for passage but is also providing funding. So

1 you can see that there is a slight difference here but in some cases there is sufficient
2 discretion where mitigation would look very similar.

3
4 Commissioner Anderson said there was reference made to additional funds that may
5 become available through the screening mitigation used for habitat projects upstream.
6 There is some gray area there. Legal Counsel Marriott said they have sufficient
7 discretion, yes, to require mitigation as it has done here.

8

Jason Kesling Burns, Oregon	Jason Kesling, Natural Resources Director for Burns Paiute Tribe, did not testify.
Tom Wolf n/a	Tom Wolf, Executive Director of Oregon Council Trout Unlimited (TU), is not opposed to the screening exemption but is vehemently opposed to the fish passage waiver and completely supports everything the BPT spokesperson just said. He fishes the Malheur below the Warm Springs every year and said it is one of the finest trout fisheries in the United States and he has caught redband there. He said this proposal of signing a waiver would cease and desist from any future attempts to restore the river to its full possibility. There should be passage at the dam. In the future as biologists for BPT look at ways to change how we manage the land, he believes we can restore all of the Malheur and perhaps down the road have anadromous fish. A waiver would stop us from doing anything. He said for the life of the FERC license it would cease and desist. He believes that we should always look to restore the native wild trout and salmon. Wolf asked the Commission to not sign the waiver. At the very least look at the exemption possibility and ask staff to work with the BPT and look at the future. We should not write off the Malheur; it is an important and great system.

9
10 Commissioner Anderson referred to the cost of mitigation and the screening exemption
11 and said the cost of screening for Mason Dam could be millions of dollars. She assumed
12 it would be substantial for WD too and asked herself if a \$3,000 contribution to mitigation
13 is really sufficient for the overall benefit. She asked how the \$3,000 was arrived at in
14 context of what the budget for the hydro project is on an ongoing basis.

15
16 Nick Josten said that number was not based on the overall economics of the hydro
17 project but on the value of the fish lost to entrainment. As ODFW staff said, we did not
18 entirely agree on the entrainment estimates. We are finding that 80% of the average
19 stocking program is a comfortable margin that covers the number of fish entrained.

20
21 Commissioner Anderson asked what the estimated cost of the Dryer Diversion mitigation
22 is. Josten did not know the open market value and guessed \$200,000 to \$250,000 to

1 design and build that structure. He said we can do it because the team building this
2 project has construction people and engineers that can offer services with sweat equity.

3
4 Commissioner Anderson asked if the dam is expected to be profitable in the future; is
5 that based on market electricity rates. Josten said it is or we would not pursue it. The
6 purpose of building it is to create revenue. There is always risk and we carry that risk
7 now. It depends on energy and concrete prices. This is not a prime project but it is solid.
8 With the water records at Warm Springs, within 10 years or so it should pay for itself.

9
10 Commissioner Anderson said the Commission is in precedent setting territory with
11 granting these kinds of waivers. There may be more of a demand in the future for these
12 small hydropower projects so how the Commission evaluates them today is going to be
13 really important. She said a large part of what we are considering here is due to the
14 presumption that certain activities are cost prohibitive. What is our access to financial
15 projections on these kinds of projects so that we can evaluate what is cost prohibitive to
16 the applicants in the future or on this project?

17
18 Josten said the important difference is if the project is reviewed every seven years and
19 the potential exists every seven years for ODFW to make us responsible for building fish
20 passage, when we go to the bank we have to demonstrate we are prepared to pay for
21 fish passage. If we cannot demonstrate that there is no project. He said even if we were
22 not required to build it initially, if the potential exists in seven years or 14 years that we
23 would have to build it, we would not get a loan and we could not do the project.

24
25 Director Elicker explained that the information on what the hydro power will generate is
26 proprietary information between WID and the hydro developer. He said we rely on the
27 affirmations of the applicant on the financials. Even if they provided that financial
28 information to us, we have no way to make an independent review of that financial
29 information and whether it is correct, the analysis is done correctly, and how much
30 revenue will be generated.

31
32 Commissioner Wolley said your mitigation proposes to fund 80% of stocking that already
33 exists. You're not proposing to put more fish in the system? Josten said no, we are
34 taking over 80% of the stocking program. Commissioner Wolley said is that considered
35 a net benefit or not? Josten was not familiar with those terms but thought it would be a
36 benefit to the finances of ODFW. Director Elicker said the Department puts together the
37 net benefit. He said staff could explain how they arrived at that net benefit.

38 Commissioner Wolley said he is not requesting any additional staff work.

39
40 Commissioner Webber said it sounds like we're looking at option waivers: one is seven
41 years; one is for the life of the FERC license. He assumes that the agreement with WID
42 could set up criteria for when we might look at this as opposed to being given the option
43 to agree that if certain events occur, we would be able to revisit it. It gives the applicant
44 more confidence that every seven years without any change in circumstances that they
45 will have to go through this. He said we could agree on what those circumstances are.

46

1 Director Elicker referred to his handout and said under 635-412-0025, section (6), it lays
2 out the exemption criteria for the Commission. "The Commission shall review, at least
3 once every seven years, exempt artificial obstructions that do not have exemption
4 expiration date to determine whether the exemption should continue." It talks about the
5 Commission revoking or amending an exemption if circumstances have changed such
6 that the basis for the exemption no longer applies.

7
8 Acting Chair Finley asked if Josten had talked with USFWS. He said you are going to
9 have the same bank problem if they intervene at the federal level. Josten said USFWS
10 was a stakeholder in the FERC permitting. They had opportunity to comment but have
11 not been very involved because the species of interest to them is well upstream. The
12 standard terms and conditions in a FERC license were referred to by BPT. That is a risk
13 that banks and hydropower developers are comfortable with because it has been in
14 place for a long time; it is quite different than a seven year review by ODFW.

15
16 Chair Finley said what is the difference? Josten said time has shown that USFWS terms
17 and conditions do not come up often where banks are hesitant to loan with that risk.

18
19 Commissioner Akenson referred to the exemption waiver and asked if these are the
20 Commission's first cases regarding hydropower. Have other waivers or exemptions been
21 granted to nonhydro projects? Passage seems to be more of a concern.

22
23 Kepler said Dorena Dam in the Willamette Valley went through this process with
24 mitigation. Under the passage we worked with the operator and COE, who said they
25 would determine when passage is going to be available. Ed Bowles, Fish Division
26 Administrator, said this one did have native anadromous salmonids in the basin but did
27 get tied up in federal pre-emption issues. Kepler said NOAA Fisheries reserved their
28 authority to require passage in the future at that facility. In the FERC process, the State
29 has authority to recommend but cannot mandate anything to FERC. Unlike the state,
30 NOAA Fisheries and USFWS have authority to mandate passage and screening. If they
31 do not require screening and passage, they usually put a condition in the FERC license
32 that says they may in the future.

33
34 Director Elicker said FERC has to ultimately agree and set the conditions when
35 hydropower is concerned.

36
37 Bowles said we are moving into new areas with small hydro developments consistent
38 with the state executive level's interest in developing these renewable energy projects.
39 We have a long legacy of passage impacts for the state; these legacy dams without
40 passage were grandfathered into our current statutes. Installing these energy producers
41 through turbines are triggers. The State has to balance the desire for renewable energy
42 broadening that portfolio and the current legacy effects of fish passage and screening.

43
44 Bowles said if the Commission grants an exemption for the fish passage, you are
45 required to determine that there is no current benefit of fish passage. If the finding is no
46 benefit to passage and no mitigation can be required, staff will review it at a later time to
47 see if conditions changed. Staff would struggle with that because the determination is

1 that there is a passage problem so mitigation is warranted and the waiver comes with it.
2 Once the Commission grants that exemption this goes through the FERC process and
3 we would not be able to reopen this. We have to look at the current conditions relative to
4 the net benefit analysis. We cannot use the legacy effects in order to create the net
5 benefit analysis; the legacy effects are much larger.

6
7 Acting Chair Finley referred to Director Elicker's handout and said under **Fish Passage**
8 **Waivers and Exemptions**, Section (9) reads, "*To receive a waiver, or an exemption*
9 *under subsection (4)(a), an owner or operator of an artificial obstruction shall enter an*
10 *agreement with the Commission (or Department as applicable) that clearly describes*
11 *timelines, duties, responsibilities, and options regarding the mitigation.*" He said this
12 clearly gives the Commission authority to enter into this agreement and to provide
13 mitigation for an exemption.

14
15 Bowles said the questions raised get at several legal nuances:

- 16 1. Flexibility for an exemption with or without determination of whether there is a fish
17 passage problem or a benefit to fish passage.
- 18 2. If legally required and fish passage goes to waiver, is there any way to adaptively
19 manage that in a meaningful way other than the seven year review.

20
21 Bowles said this project is in the FERC process. He asked the Commission to allow staff
22 to review these questions and bring them back as appropriate within Oregon Secretary
23 of State filing notice requirements.

24
25 Acting Chair Finley asked the Commission what they would ask Bowles to evaluate.

26
27 Commissioner Wolley said his concern is the adaptability and the Department being shut
28 out of the ability to intervene if staff feels it is needed to be able to monitor and assess
29 habitat conditions more frequently.

30
31 Commissioner Anderson shared the same concern. She said she's not convinced that
32 the obligations being suggested for mitigation are sufficient for the project in regard to
33 both screening and passage. As we move forward, can we look at whether federal
34 agencies have other kinds of hard and fast analytics for determining when it is unfeasible
35 for an applicant to financially do the requirements?

36
37 Commissioner Webber said he is 100% supportive of this project as circumstances
38 currently exist. If we granted an exemption it is every seven years before a review and
39 that is not stable enough for the applicant to move ahead with the project. He hates to
40 give away involvement for the period of the FERC license. He asked staff to look at what
41 options the Commission might have between every seven years until the next license
42 renewal; an option that is not either or.

43
44 Commissioner Akenson said these projects are very viable. With current passage and
45 screening rules this is new to have hydroelectric as those kind of projects to qualify. She
46 asked staff to see if the Commission can treat hydroelectric projects any differently than
47 other projects.

1
2 Acting Chair Finley said these regulations on fish passage waivers and exemptions were
3 crafted at a different time. There probably is a justifiable and rationale basis for a seven
4 year periodic review. We are faced with completely new competing issues and need to
5 look at these regulations as a part of this review. Are they properly crafted with the new
6 responsibilities we have today? A state policy for renewable energy is not a bad idea.
7

8 Director Elicker said he understood the Commission's comments on the rules. We can
9 discuss reviewing and rewriting those rules. However in the timeframe left for this
10 project, staff would like to move as quickly as possible and bring this back taking into
11 account the concerns here by the Commission. He said this project is in the federal
12 process so staff needs a definitive answer from the Commission and State of Oregon
13 whether there will be an exemption granted, a waiver granted, or nothing granted.
14 He asked if Commissioner Webber could work with staff and Attorney General staff on
15 these concerns so staff could bring them back before the Commission.
16

17 Director Elicker said if the Commission is moving towards a motion to table Exhibit C for
18 now, they may want to consider tabling Exhibit D on Mason Dam which has the same
19 issues. Staff could rework both exhibits and then come back before the Commission.
20

21 Acting Chair Finley asked for a motion to table both Exhibit C and Exhibit D.
22

23 Commissioner Webber said if any proponents or opponents of Mason Dam are here it
24 would be appropriate to take their public comments on Exhibit D for Mason Dam.
25

26 Director Elicker said Fred Warner, Chair of Baker County Commission, was here today.
27 He asked the Commission to table this project (Exhibit C) and allow staff to present
28 Exhibit D on Mason Dam and allow the public to comment on that project and then table
29 it as well so staff can bring back as soon as possible both Exhibit C and Exhibit D.
30

31 *Action: Commissioner Webber moved to table the Warm Springs Irrigation*
32 *District application at this time. Commissioner Wolley seconded the*
33 *motion. (NOTE: Commissioner Webber amended motion end of meeting.*
34 *See page 66, line 35)*
35

36 Acting Chair Finley said the Commission is tabling this exhibit for the foreseeable future
37 which will be determined by the Department and brought back before the Commission.
38 Commissioner Webber said this would be working within the federal license with regard
39 to how fast we need to go. Acting Chair Finley said, have we asked in the FERC process
40 to extend the comment period or the timeline? Director Elicker said you could ask FERC
41 but his intent is to bring these projects back as soon as possible.
42

43 *Commissioner Webber amended his motion and moved to table the*
44 *Warm Springs application with no timeline but sooner rather than later.*
45 *Commissioner Akenson seconded the amended motion and the motion*
46 *carried unanimously by a vote of five.*
47

1 **Exhibit D: MASON DAM HYDROELECTRIC PROJECT FISH SCREENING**
2 **EXEMPTION AND FISH PASSAGE WAIVER**

3 Acting Chair Finley said the Commission would hear the staff presentation and
4 immediately afterwards, other than the Commission's questions, take public testimony.

5
6 Elizabeth Moats, Northeast Region Hydropower Coordinator, said Baker County applied
7 to FERC to construct a hydroelectric project on Mason Dam (MD) on the Powder River.
8 MD forms Philips Reservoir that is owned by BOR and is operated by the Baker Valley
9 Irrigation District (BVID) for flood control and irrigation. There is a minimum flow below
10 MD of 10 cubic feet per second (cfs). Baker County proposes to install a turbine on the
11 outlet of the dam and operate the hydro project when flows are from 100 cfs up to 300
12 cfs. They do not propose to change the operation of the dam. Currently there is no fish
13 passage or screening facilities at MD.

14
15 There is no anadromous fish due to other fish passage barriers downstream. Moats said
16 only resident species are present. Above MD the habitat is heavily impacted due to past
17 gold mining. Upstream of that area the habitat is good on the Wallowa Whitman National
18 Forest (WWNF). The reservoir is managed by ODFW for a trout fishery and to reduce
19 yellow perch abundance.

20
21 For the Fish Screening Exemption, Moats said Baker County proposes to:

- 22 • Fund stocking of 1,000 rainbow trout per year into Philips Reservoir.
- 23 • Provide screening at Shaw-Stewart Diversion located 9 miles downstream of MD.
- 24 • Provide \$90,000 to screen other unscreened diversions in Powder River basin.

25
26 Moats said staff reviewed the analysis to determine if this proposal would provide
27 adequate protection for fish. We determined the impact would be that fish would continue
28 to be entrained through MD if screening is not provided. We consulted with USFWS and
29 USFS and determined that mitigation is needed for redband trout and hatchery rainbow
30 trout, but bull trout would not be impacted. We used conservative estimates in Baker
31 County's entrainment report. Since this was not an onsite empirical study, staff
32 determined a 10% conservation factor would need to be added to the estimate to ensure
33 adequate protection of fisheries.

34
35 Based on the conservative estimates from the entrainment report, staff developed a
36 mitigation goal of 910 hatchery rainbow trout and 957 redband trout in need of protection
37 through the mitigation. Moats said staff determined the mitigation proposal would meet or
38 exceed the mitigation goals. This package was developed with Baker County and state
39 and federal stakeholders as part of FERC licensing process. It was reviewed by FSTF
40 who voted to support the screening exemption.

41
42 Moats discussed the Fish Passage Waiver Proposal. She said staff looked at the native
43 migratory fish that were historically or are currently present. Summer steelhead and
44 spring chinook were extirpated due to other downstream obstructions and mountain
45 whitefish, whose distribution is currently unknown. There are native redband trout,
46 suckers, northern pikeminnow, and bull trout at MD. Redband trout are widely distributed
47 upstream and downstream of MD and are assumed to utilize the reservoir as well.

1 Suckers and pikeminnow are widely distributed. Bull trout are located in two tributaries
2 upstream of Philips Reservoir in high quality habitat on the WWNF.

3
4 In lieu of passage at MD, Baker County proposes to improve passage at two culverts:

- 5 • Silver Creek - replace undersized culvert.
- 6 • McCully Fork – improve passage with a roughened channel design downstream
7 and make modifications within the culvert to meet fish passage criteria.

8
9 Moats said staff performed a net benefit analysis and determined:

- 10 • Passage at MD would be used by redband trout but would not increase their
11 distribution. Could improve their genetic diversity which could lead to benefits in
12 productivity; would be limited due to poor habitat conditions upstream and
13 downstream of MD and within the reservoir.
- 14 • Native suckers and pikeminnow would use passage; more tolerant of poor water
15 quality conditions. Would have similar benefits to redband trout if not better.
- 16 • Bull trout in tributaries upstream of MD would not benefit from passage.

17
18 Staff looked at the benefits of proposed mitigation for Silver Creek, a partial barrier.

- 19 • Redband and bull trout are present. Replacing culvert would improve spawning
20 opportunities, genetic diversity, and productivity.
- 21 • Located in bull trout critical habitat, bull trout would benefit by increased access to
22 5.3 miles of high quality habitat and support of diverse life histories of the species.

23
24 Moats discussed the benefits of proposed mitigation for McCully Fork:

- 25 • Redband trout, suckers, and pikeminnow are present at this site. Would allow
26 access to 5.7 miles of high quality habitat currently blocked at this culvert.
- 27 • Increase spawning opportunities for all species, specifically redband trout that are
28 lost to the system upon out migration.
- 29 • Allow migratory redband trout to return to their natal streams supporting life
30 history diversity within the population.

31
32 Moats said staff compared the benefits of the mitigation proposal and passage at MD.
33 Based on the comparisons made staff concluded that the proposed mitigation measures
34 will provide a net benefit to native migratory fish over passage at Mason Dam.

35
36 **Public Testimony:**

Fred Warner Baker City, Oregon	Fred Warner, Chair of Baker County Commission, distributed written testimony and introduced Jason Yencopal, County Projects Administrator. He said this project is on a fast track because within a month FERC will make a ruling on whether to grant Baker County a license; the State will still retain some jurisdiction. He didn't know how tabling this project would affect Baker County or their standing with FERC. Highlights of his testimony and letter: <ul style="list-style-type: none">• Baker County went over and above on fish screening and did a literature study on the entrainment at MD. It seemed
-----------------------------------	---

	<p>to indicate that fish mortality with the turbine would be less than the existing facility.</p> <ul style="list-style-type: none"> • Baker County took the highest number of fish that could possibly go through MD and came up with 828 hatchery rainbow trout and 870 redband entrained annually. Warner said that presupposed there was water running through the dam year long and they would entrain fish. In reality there is a month period with potential for entrainment of the native fish other than the perch. • On mitigation for fish screening, Baker County agreed with staff in order to get this process to go through but we did make a really good effort to meet the screening mark. • For fish passage Baker County is doing nothing to the water at MD: not changing the current intake or the timing or amount of water being delivered. The Fish Passage Committee did not believe it was a trigger but Baker County went ahead with the passage waiver because we need this process to go forward. <p>Warner cautioned to be extremely careful on fish passage. He said if Hells Canyon Dam puts in a fish ladder and native fish are coming from the Columbia, you cannot put it on the small hydro plant; it has to be BOR, COE, or NOAA. Those fish passages on different places are going to cost millions and that is not a trigger for these small projects. You will not have any small projects if you don't give certainty that you will not have to come up with passage. You might be a partner in that passage when things change in 40 years. There is no impact to the fishery by putting in the hydro plant. For passage, this is just a trigger in your rules.</p>
<p>Tom Wolf n/a</p>	<p>Tom Wolf, Executive Director of the Oregon Council Trout Unlimited (TU), said TU believes this should be tabled and the waiver should not be signed; it should be looked at carefully. Down the road there will be passage erected over the dams in the Snake that are blocked now. We need to think how we restore rivers like the Powder and Malheur for anadromous fish. He said 20 years from now biologists will look for ways to provide habitat restoration for these streams that are neglected in eastern Oregon. Hydro on dams is going to be happening all over now. Wolf challenged the Commission to look long term at how we provide fish passage and how these systems can be restored.</p>

1 Director Elicker said the Commission would like to see staff return with legal analysis on
2 some of these options. He said if the Commission makes a motion to table this project
3 he intends to bring both projects back in front of the Commission as quickly as possible.
4

5 Bowes said it is in ODFW and the Commission's best interest to get out in front of the
6 FERC process. This is do-able with the timeline on Warm Springs. We do run some risk if
7 we don't get out in front of FERC on MD.
8

9 Commissioner Akenson asked would FERC make a decision without the contribution
10 from ODFW. Bowles said the FERC process would move forward without us and would
11 make a ruling whether these issues are required in their license. We run the risk of our
12 piece being marginalized. Commissioner Akenson said would that mean the waiver or
13 exemption would not even be part of that package? Bowles said it could be moot.
14

15 Acting Chair Finley said we have separate authority and separate jurisdiction from
16 FERC? Bowles said yes. Sometimes these federal pre-emption assumptions and our
17 ability to influence those processes get caught up in that. It doesn't negate our
18 authorities but those federal licenses. These are partial ownerships of federal projects, in
19 this case the BOR.
20

21 Director Elicker asked Kepler to comment on how things are pre-empted.
22

23 Kepler said with Mason Dam any day now FERC will issue notice that the hydro project
24 application is ready for environmental review. Staff will then have 60 days to make
25 recommendations. If we don't have a waiver, we will probably recommend passage of
26 that structure and will rely on FERC to decide whether that will happen or not.
27

28 Bowles said regarding the Secretary of State filing requirement, our assumption is we
29 would get this to the Commission in time to inform that.
30

31 Acting Chair Finley said we have 60 days after they issue it and they have not issued it
32 yet. Kepler said that is correct.
33

34 Commissioner Webber said if we miss the time table to comment to FERC and we don't
35 grant a waiver or exemption is Baker County still in position to proceed with this project?
36 Kepler said they are already going through the process now. ODFW would submit its
37 recommendations. At that point if we don't have any agreements, we would require
38 passage and screening at MD, so it is up to FERC to say yes or no on that. Our only
39 option would be to require passage and screening; and we could provide a waiver later
40 to attach to the water right, also a state requirement. It is different than the federal
41 requirement which leads to the concern about federal preemption.
42

43 Director Elicker said Acting Chair Finley would like staff to request an extension from
44 FERC if because of other time constraints staff cannot come back to the Commission in
45 time to submit our comments within the 60 day period. He did not know how successful
46 that would be or how much Baker County would like ODFW to get an extension of time;
47 they want to move ahead with this project.

1
2 Director Elicker said if it is needed, he could call a special meeting of the Commission to
3 facilitate the Commission's actions prior to the end of the 60 days, at least on MD. Staff
4 will look at both issues and insure that the Commission's actions are reflected in our
5 comments to FERC within the 60 day period. If it falls outside a regularly scheduled
6 Commission meeting, we will call a special meeting on just the Mason Dam project.

7
8 *Action: Commissioner Webber moved to table the Mason Dam Hydroelectric
9 Project fish screening exemption and fish passage waiver application.*

10 *Commissioner Akenson seconded the motion and the motion carried unanimously
11 by a vote of five.*

12
13 **Exhibit E: PROGRESS REPORT ON IMPLEMENTATION OF COLUMBIA RIVER
14 FISH MANAGEMENT AND REFORM RULES**

15 Director Elicker said this is the first annual review of the new rules. Staff will do a very
16 thorough job of giving a report to the Commission on how they have been implemented.

17
18 Ed Bowles, Fish Division Administrator, provided background starting with the Governor
19 asking the Commission to consider a new fisheries management and reform framework
20 in August 2012 up to the new rules adopted by the Commission in December 2013.

21
22 Bowles said Senate Bill 830 (SB 830) passed by the 2013 Legislature:

- 23 • Establishes policy objectives for fish management and reform rules that the
24 Commission adopted.
- 25 • Authorizes the Commission to allow the commercial use of new fixed gear and
26 seines in the Columbia River (CR). Prior to SB 830 only gillnets were allowed.
- 27 • Established the Enhancement and Transition Funds.
- 28 • Approved ODFW's budget separate to SB 830.
- 29 • Included additional spending limitation and authority for alternative gear research
30 funding.

31
32 Bowles said the *Enhancement Fund*, implements the Commission's rules, has been
33 established within ODFW and represents: 1) \$1.5 million of General Fund (GF); and 2)
34 the limitation for \$2 million expected in the Columbia River Endorsement (CRE). The
35 Commission considered the CRE at a prior meeting. It is required by the public to fish for
36 salmon, steelhead, and sturgeon in the Columbia Basin. He said the *Transition Fund*
37 (\$0.5 million of GF) is specific to mitigating any economic hardship that occurs explicitly
38 as a result of the rules adopted by the Commission. The agency has established that
39 fund. Staff is working with interested counties and commercial fishers that are impacted
40 to develop a package for the Commission's consideration and adoption relative to
41 implementing that fund.

42
43 Bowles said on *Fick v. ODFW* litigation the Court of Appeals was petitioned by the
44 litigants to overturn the framework rules and to stay the implementation of those rules
45 during judicial review. The initial stay granted in February 2013 did affect the allocation
46 shifts planned for the spring and summer fisheries. The Commission reconsidered those
47 framework rules and readopted them in June 2013. The petitioners requested a new

1 stay of the newly adopted rules that the Appellate Commissioner denied in October. The
2 petitioners then appealed the stay to the full court and the Court of Appeals affirmed
3 denial of the stay in December 2013. The petitioners filed a brief for judicial review in
4 December 2013. The deadline for ODFW's response is February 10, 2014.

5
6 Tony Nigro, Ocean Salmon and Columbia River Program Manager, said staff included a
7 lot of detail in *Attachment 1- Agenda Item Summary* intending the document to serve as
8 a reference today. He said 2013 through 2016 constitutes the transition period in which
9 much of staff's work focuses on evaluations necessary to implement the changes in the
10 Commission's new rules and reforms.

11
12 *Off-Channel Enhancements*. During a slide presentation, Nigro said the rules adopted by
13 the Commission in June 2013 directed ODFW to provide additional fish for release in off-
14 channel areas but do not specify specific numbers. Oregon's commitment under the
15 reform framework is to provide the following targets:

- 16 • 750,000 additional Spring Chinook.
- 17 • 720,000 additional Coho.
- 18 • 500,000 additional Select Area Bright (SAB) Fall Chinook.
- 19 • For additional spring Chinook and coho staff actually started providing some of
20 those in 2010, so in 2013 new production that we speak to and to meet our
21 commitments is 500,000 Spring Chinook and 600,000 coho.

22
23 Nigro summarized the *New Oregon Production in 2013* by stock:

- 24 • Spring Chinook. The court ordered stay of the rules the Commission adopted in
25 December 2013 complicated staff's plans for spring Chinook. After court action
26 staff released only 389,000 of the 500,000 initially intended to release.
- 27 • SAB Fall Chinook. Fell slightly short in release numbers although staff maximized
28 the egg take from the brood stock available in 2013. In general there is sufficient
29 numbers of fish and eggs to meet our obligations.

30
31 Nigro referred to the table *Off-Channel Enhancements - New Oregon Production in 2014*
32 and said it differs slightly from the table in the Commission's packet (see Attachment 1,
33 page 5). Staff inadvertently included some base production to be released in Youngs
34 Bay; that has been corrected from 680,997 to 630,908.

35
36 Bowles noted it was for spring Chinook. He said with a 500,000 target the original table
37 had a total of 680,997 that included some of the base; this table today fixes that number.

38
39 Nigro discussed *Expanded Seasons and Areas*. He said the Commission directed
40 ODFW in OAR 635-500-6705(7)(b) to provide additional commercial fishing opportunity
41 in the off-channel areas:

- 42 • Implemented new winter fishery from mid-February to mid-March in Tongue
43 Point/South Channel and Knappa Slough; staff intends to repeat in 2014.
- 44 • Discussed with commercial fishers doubling hours per week in June to fish in
45 Youngs Bays. In 2013 they fished 48 hours per week.

- 1 • To expand the fishable areas, staff conducted test fishing to look at stock
2 composition and catch rates and is summarizing that information now.
3

4 Nigro discussed *New Sites* to provide additional commercial fishing opportunity. He said
5 staff is reviewing existing information from studies they did 20 years ago to identify
6 candidates for further consideration. This year staff will test fish in sites deemed
7 promising to assess stock composition and catch rates. In 2013, Washington
8 Department of Fish and Wildlife (WDFW) test fished in Cathlamet Channel as a potential
9 new site and they plan to release 250,000 spring Chinook there in 2014.

10
11 Nigro said the transition period affords staff time to identify and evaluate alternative gear
12 types that may be used to commercially fish in the mainstem. This evaluation actually
13 started in 2009 using Mitchell Act dollars and money appropriated by the Legislature.
14

15 Nigro discussed alternative gear types tested to date:

- 16 • Purse and beach seines can catch large numbers of Chinook and coho in the fall
17 period. They also catch large numbers of steelhead which staff is evaluating with
18 WDFW and NOAA Fisheries.
19 ○ Staff is still evaluating viability for summer seining. Staff has handled a large
20 number of sockeye which may pose a problem when we consider
21 implementation. In response, staff is looking at ways to reduce the handle by
22 modifying the mesh size and configuration of the gear and will this summer
23 conduct the second year of tests of that modified gear.
24 ○ Although purse seines appear to be effective in the fall there are still hurdles to
25 overcome prior to implementation of a fishery. WDFW has completed field
26 work associated with their evaluation of long term release mortality of Chinook,
27 coho, and steelhead during the fall. They have yet to complete their final
28 analysis. These analyses are central to NOAA Fisheries determination of
29 whether the gear will receive ESA authorization.
30 ○ Staff is working with commercial fishers on what it takes to implement pilot
31 fisheries in fall 2014 once authorization is given.
32 • Coho tangle nets (3-3/4"–mesh). Received NOAA Fisheries authorization to
33 conduct the fishery in late summer 2013; staff set the pilot fishery for October
34 2013. Participation in fishery was lower than hoped for but fishers did land over
35 4,600 coho and 1,800 Chinook; about 75% handled were hatchery fish. Staff is
36 evaluating the long term mortality associated with this gear as a condition of
37 existing ESA authorization.
38 • Other Gear. A few years ago staff evaluated commercial troll gear which proved
39 ineffective in the river and evaluated a floating fish trap that was difficult to fish
40 given the strong currents in the lower river. WDFW is evaluating a fixed trap net.
41 This year staff plans to look at hook-and-line and arrow nets and commercial
42 fishers plan to build and test a fish wheel under ODFW experimental gear permit.
43

44 Nigro discussed *Allocation Shifts* for 2013. He said the rules the Commission adopted
45 changed the allocations of ESA impacts and harvestable surpluses of salmon assigned
46 to the recreational and commercial fisheries. The intent beginning in 2013 was to phase
47 these shifts in gradually and in a way that avoided significant economic harm to

1 commercial fisheries. The plan shifts were compromised for the spring and summer
2 fisheries by the Court of Appeals order staying the implementation of the new rules. He
3 said under the stay five percent (5%) of the ESA impacts for upriver spring Chinook that
4 would have been allocated to the recreational fisheries were instead “parked”. We had
5 to park 5% annually 2008 through 2012 because of differing allocation policies between
6 the Washington and Oregon Commissions. The summer recreational fisheries were
7 allocated 5% less summer Chinook than they would have received under the new rules,
8 and commercial fisheries were allocated 5% more because of the stay. Under the stay,
9 Oregon’s policy position was 50:50 share in allocation and Washington’s was 60:40. We
10 split the difference and went to a 55:45 allocation.

11
12 Nigro said the fall fisheries and white sturgeon fishery were implemented consistent with
13 the new rules because the stay had been lifted by then. Plus the Commission did not
14 change the allocation for white sturgeon in their new rules.

15
16 Nigro said recreational fisheries in the fall used their full share of Tule fall Chinook. You
17 may ask the question, if the rules are no more than 70% of upriver Brights for
18 recreational fisheries and no less than 30% for commercial for upriver Brights why did
19 you instead in 2013 allocate 44% and 60%? Nigro said we were able to meet the
20 recreational fishery objectives by allocating the Tule impacts as defined in rule and that
21 actually left some upriver bright impacts unused by the recreational fishery. This enabled
22 us to use those remaining impacts to maximize returns to the commercial fisheries. We
23 did this by focusing commercial fisheries in Zones 4 and 5 where they avoided Tule
24 Chinook and could live within their allocation of Tules but harvest the abundant surplus
25 of upriver Brights we had this year.

26
27 Nigro discussed *2013 Spring Chinook Fisheries* run sizes and guidelines:

- 28 • Upriver Spring Chinook runs sizes were forecasted at 141,400; actual run size
29 was 123,100 (87% of forecast).
- 30 • Guidelines for harvest and the incidental take of upriver stocks to shape the
31 fisheries and comply with ESA were less than what was assumed going into the
32 season. Didn’t affect fisheries management prior to run size update but did affect
33 opportunity we could provide after run size update.

34
35 Nigro discussed *2013 Spring Chinook Recreational Fisheries*:

- 36 • Recreational fishery below Bonneville fell a few days short of March/April
37 objective to provide 45 days of fishing. Provided 22 days after run size update.
- 38 • Recreational fishery above Bonneville. Avoided emergency closures and provided
39 eight days of fishing after run size update.
- 40 • Harvest levels in both fisheries were within expectations given the downgraded
41 run size: 7,640 below Bonneville and 1,040 above Bonneville.
- 42 • Full compliance with ESA and *US v. Oregon* obligations.

43
44 Nigro discussed *2013 Spring Chinook Commercial Fisheries*:

- 45 • Mainstem harvest fell short of expectations. Lower Chinook to steelhead ratios in
46 March limited opportunities prior to run size update to one single opener in early

1 April. After run size update used large mesh gillnets to prevent handle of
2 steelhead that resulted in limitation in terms of ESA impacts.

- 3 • Off-Channel (Select Area) harvest was within expectations.
- 4 • Full compliance with ESA and *US v. Oregon* obligations.

5
6 Nigro discussed *2013 Summer Fisheries – Summer Chinook Run-Sizes and Guidelines:*

- 7 • Summer Chinook run sizes were forecasted at 73,500; actual run size was 67,600
8 (92% of forecast). Despite downgraded run size the seasons were not modified
9 for recreational fisheries. The seasons ended as staff had planned preseason.
- 10 • Below Bonneville to meet those seasons fished right up to the guideline. Harvest
11 was 2,200 summer Chinook.
- 12 • Above Bonneville harvest of Chinook was very low – 30 fish.
- 13 • Full compliance with ESA and *US v. Oregon* obligations.

14
15 Nigro discussed *2013 Summer Commercial Fisheries:*

- 16 • Mainstem commercial fishery used most of its guideline in the two days of fishing
17 provided. Harvest of 1,870 summer Chinook met our expectations.
- 18 • Off-Channel (Select Area) harvest of 1,990 local spring and SAB fall Chinook met
19 our expectations.
- 20 • Full compliance with ESA and *US v. Oregon* obligations.

21
22 Nigro discussed *2013 Fall Fisheries- Fall Chinook and Coho Run-Sizes and Guidelines:*

- 23 • Bright fall Chinook stocks forecasted at 678,640; actual run size was 1,200,000
24 Chinook (177% of forecast).
- 25 • For Coho, although an updated coho estimate will not be available until this winter
26 when staff completes the run reconstructions all indications are that the actual
27 returns are going to be less than what staff forecast.

28
29 Nigro discussed *2013 Fall Chinook Recreational Fisheries*. He said seasonal objectives
30 for recreational fisheries below Bonneville Dam are defined in rule for August and
31 September. We generally exceeded those objectives in rule except for:

- 32 • Buoy 10. In rule the objective is to define season as August 1 through Labor Day,
33 September 2, but fell one day short and ended season on September 1. We did
34 keep the October 1 through December 31 season open.
- 35 • Season objectives for the rest of the fall fisheries were met: Tongue Point to
36 Warrior Rock, Warrior Rock to Bonneville Dam, and above Bonneville Dam.
37 Objectives are not defined in rule for the river above Bonneville Dam but we strive
38 to keep the fisheries open from October to December.
- 39 • Full compliance with ESA and *US v. Oregon* obligations.

40
41 Nigro discussed *2013 Fall Commercial Fisheries*.

- 42 • Mainstem gillnet fishery for Chinook. We provided significant opportunity and a
43 high harvest of 85,000 Chinook because the fishery was focused in Zones 4 and
44 5. This allowed commercial fisheries to target upriver Bright stocks while avoiding
45 Tule Chinook, which were the main ESA constraint for these fall fisheries.

- 1 • Coho harvest was lower than expected in the mainstem gillnet fishery because
- 2 the run size will come in less than what we had forecast.
- 3 • For the Tangle-Net coho fishery in October the participation was lower than
- 4 expected but did handle the number of hatchery fish expected to be handled.
- 5 • Off-Channel (Select Areas). Commercial fisheries provided ample opportunity.
- 6 Harvest levels for coho (42,500) and Chinook (23,700) exceeded expectations.
- 7 • Full compliance with ESA and *US v. Oregon* obligations.

8
9 Nigro discussed *2013 White Sturgeon Fisheries below Bonneville Dam*. As of January 1,
10 retention of white sturgeon below Bonneville Dam and Willamette River below Willamette
11 Falls is prohibited year round under rules the Commission readopted in June 2013.

- 12 • Abundance of legal-sized white sturgeon was forecasted at 74,300 but the actual
- 13 abundance was 114,200 (154% of forecast).
- 14 • Staff did not adjust Harvest Guidelines because actual forecast is not available
- 15 until most of the season is complete. Staff managed under a guideline harvest
- 16 rate of 13.6% but because we have more legal-sized sturgeon than originally
- 17 anticipated the actual harvest rate for 2013 is around nine percent (9%).
- 18 • Recreational fisheries for sturgeon in:
 - 19 ○ Estuary was very good and fishery closed 10 days early; resulted in fishery
 - 20 going 13% over their guideline. Harvest: 4,850 fish.
 - 21 ○ Wauna to Bonneville Dam fishery went January through mid-June as
 - 22 planned; season was scheduled to reopen in October but was rescinded
 - 23 because they were close to the guideline in the first season. Harvest: 2,021
 - 24 fish.
 - 25 ○ Willamette harvest was 1,213. A few more days were provided by adding a
 - 26 third 4-day opener in July and 1 day in October.
- 27 • Commercial Fisheries guidelines were met: 1,621 in the mainstem, and 400 in
- 28 Off-Channel (Select Areas).

29
30 Nigro said two metrics are used when formulating the new rules with respect to fisheries
31 performance. There are no set standards for these metrics but staff can use the
32 analytical framework in Table C4 and Table C5 of the Work Group recommendations
33 that the Commission endorsed relative to these metrics.

- 34 1. Recreational Angler Trips were within expectations when accounting for run
- 35 sizes, season structures and lengths. The trips were lower than the past couple
- 36 of years for spring and summer and were much higher in the fall.
- 37 2. Commercial Ex-Vessel Values and harvest numbers were within expectations
- 38 when accounting for actual run sizes and season structures and lengths.
- 39 Compared to the past couple of years they were lower for spring and summer
- 40 and higher for fall Chinook.

41
42 Nigro addressed *2014 Management Issues*:

- 43 • Youngs Bay Control Zone. SB 830 directs the Commission to establish a control
- 44 zone for recreational fishing at the mouth of Youngs Bay this year. Staff will
- 45 present draft rules to the Commission at its February 7, 2014 meeting.

- 1 • Pilot Purse and Beach Seine Fisheries. ODFW is working with WDFW and
2 commercial industry to plan for these fisheries in the fall. Need to obtain ESA
3 authorization from NOAA Fisheries, and work through regulatory and logistical
4 challenges including rules for participation, harvest quotas, and gear and boat
5 regulations. Meeting scheduled with Columbia River Commercial Fishery Advisory
6 Committee on January 16, 2014 to discuss pilot seine fisheries for 2014.
- 7 • Coho Harvest Management. Working with WDFW and NOAA Fisheries to update
8 harvest management framework for coho. In the fall take the updated harvest
9 management framework before the Pacific Fishery Management Council for their
10 consideration and adoption.

11
12 Ed Bowles summarized *Key Elements for Review*:

- 13 • Legislation: SB 830 and the Budget.
- 14 • Status of *Fick v. ODFW* Litigation is moving forward.
- 15 • Off-Channel Enhancements moving forward and on track for 2014.
- 16 • Alternative Gear Evaluations moving forward with WDFW during transition period.
- 17 • Allocation Shifts.
- 18 • 2013 Fisheries overall was a good year for sport and commercial fishing.
- 19 • 2013 Angler Trips and Ex-Vessel Values were aligned with staff's expectations.
- 20 • 2014 Management Issues.

21
22 Bowles said this has been a very productive first year. He said if the Commission has
23 particular metrics or areas of emphasis that staff should be looking at beyond what the
24 Commission had identified already through their process to share those with staff.

25 26 **OTHER BUSINESS**

27 **Executive Session**

28 Acting Chair Finley said the Oregon Fish and Wildlife Commission will now meet in
29 executive session during our lunch hour. The Executive Session is held pursuant to
30 ORS 192.660 (2)(h) which allows the Commission to meet in executive session to
31 consult with legal counsel concerning the legal rights and duties of a public body with
32 regard to current litigation or litigation likely to be filed. Representatives of the news
33 media and designated staff shall be allowed to attend the executive session. All other
34 members of the audience are asked to leave the room. Representatives of the news
35 media are specifically directed not to report on any of the deliberations during the
36 executive session, except to state the general subject of the session as previously
37 announced. No decision may be made in executive session. At the end of the executive
38 session we will return here to this room to open the public meeting and welcome the
39 audience back to hear the remainder of the exhibits on the Commission's agenda. He
40 clarified that will be public testimony on the Columbia River fisheries overview (Exhibit E)
41 that was just presented.

42
43 Acting Chair Finley reopened the Commission meeting at 1:25 p.m., and returned to
44 Exhibit E on the Commission's agenda.

1 **Exhibit E: PROGRESS REPORT ON IMPLEMENTATION OF COLUMBIA RIVER**
2 **FISH MANAGEMENT AND REFORM RULES - continued**
3

4 Acting Chair Finley said there was some success seen with the tangle-nets. How was
5 that administered? Who was using the tangle-nets and in what sections of the river?
6 What was the evaluation by the commercial fisherman that used it?
7

8 Bowles said the primary intent of testing is the need to get at hatchery coho and the
9 targeting of hatchery Chinook in the lower river. This is during a period of time when the
10 traditional gillnets end up with too much handle impacts. He said the tangle-net approach
11 allows for less handle mortality of the captured fish so that you can target those hatchery
12 fish more effectively, leverage more catch of hatchery fish for each wild fish impact. It
13 allows you to be in amongst those lower river coho. This was a piece the Commission
14 considered in the reform packet whether with tangle-nets or the seines.
15

16 Nigro said we had eight days opened in October, Zones 1 through 3 in the lower river. It
17 was a season set by the Compact, so it was a fleet based fishery. The participation was
18 lower than we had hoped but we had worked with the commercial industry earlier in the
19 year on the specifications for the gear. Our intent was to allow them sufficient time to
20 order and receive the gear so there would be ample participation in the fishery in
21 October. We had observers on that fishery to look at what the handle of coho was in
22 terms of marked rate. We expected and saw a marked rate of 75%.
23

24 Commissioner Webber referred to the *Allocation Shifts* table (see bottom slide, page 9)
25 and said you talked about the Upriver Bright Fall Chinook being 70:30 but the actual
26 allocation was 45:56. He heard that over a long period of time when we reasonably
27 reach our recreational objectives is when we have this option of turning the commercials
28 loose. Is that what resulted in the inequities in the allocation?
29

30 Bowles said yes. Within your allocation rules you set up a presumptive allocation shift.
31 Those shifts are particularly for the fall fishery and are caveated with once you meet
32 reasonable sport objectives, of which you defined by rule for the fall fishery, then the
33 surpluses go to the commercials. The functional result of those ESA impact allocations is
34 what we always assumed they would be and that is how you get at the fall economics for
35 the commercials.
36

37 Commissioner Webber said is that a result of the 70% allocation?
38

39 Bowles said no it's a combination of the Tule and Upriver Bright runs. The Tule run is the
40 primary driver constraining the lower river fisheries. So, where you put that fishery is a
41 key piece. As part of the move towards more selectivity both with gears and techniques
42 was the ability to leverage more catch with the least amount of impacts. He said this is
43 the ESA impact piece; so, the Tule impacts available to meet this sport objective were
44 one day short for Buoy 10. The tule impacts there are close to the 70:30 and that allowed
45 us to provide more of these impacts for the upriver Brights to get at those additional fish
46 essential for the commercial fishery economics.
47

1 Commissioner Akenson said in the future she would like to see the ability to look at
2 multiyear trends or comparisons of the ex-vessel values and the angler trips per year.
3 You said they were within what staff expected but we don't see those numbers unless
4 we look back at our information to see what was expected and how does that number
5 compare with past years.

6
7 Bowles said good point. As far as the primary allocation shifts there is very little this first
8 year. The Commission is looking at the results of this under better runs, a shift in how
9 staff approached the fall fishery by reserving most of those impacts to above the Lewis
10 River and upper zones of the non-Tribal fishery. He would like to get at some time series
11 or trends that would be caveated or corrected to run-size so that the Commission was
12 looking at true effects potentially of the rule. Staff has talked with Washington about how
13 to track this metrics going forward.

14
15 Commissioner Akenson said she would like to see an update on the recreational
16 allocation among mainstem mid-Columbia River, the upper tributaries, and the
17 Deschutes River. We talked at our previous meeting about all of the recreational
18 fishermen are paying for the CRE. We need to see how that gets allocated out that
19 increased fishery allocation to recreational fishers to insure that all of the fishers that are
20 part of that CRE are getting benefits.

21
22 Bowles noted her request, and said Oregon and Washington formed an Ad Hoc Group to
23 discuss allocations. The Group held one meeting to talk about above Bonneville versus
24 below Bonneville allocations. It was not in the context of tracking metrics but staff will
25 make that point in the future.

26
27 Commissioner Akenson said there have been two meetings to allocate among the
28 different sections of the river for recreational fishers. Would the Commission be given an
29 update on the results of that?

30
31 Nigro said the intent as discussed at the last Ad Hoc Group was for the group to frame
32 what the issue is relative to what the members would like to see in a sharing formula for
33 the available fish and then to provide that feedback to our Columbia River Recreational
34 Fishery Advisory Group. The Ad Hoc Group is still working through their conversations to
35 see if there is a consensus; right now there is no consensus. He said folks who reside in
36 the Tri-Cities area are upstream from Bonneville and want to see a different sharing of
37 the available fish. There is still work to be done on how to define the equitable sharing of
38 fish given the endorsement sales in both Washington and Oregon.

39
40 Commissioner Akenson referred to staff's report on Chinook and coho upstream from
41 Bonneville Dam where 30 fish were taken. Do these above Bonneville Dam numbers
42 just refer to the mainstem or does that include the Snake River in our state and around
43 Hermiston? What does the upstream from Bonneville Dam area include?

44
45 Nigro said in the Agenda Item Summary (Attachment 1) upstream from Bonneville Dam
46 is the mainstem fisheries. For Spring Chinook it includes the Snake River below Lower
47 Granite and in the mainstem Columbia below Priest Rapids Dam.

1
2 John North, Columbia River Fisheries Manager, added that those 30 fish were just the
3 summer catch in Zone 6, from Bonneville Dam to McNary Dam. There were several
4 thousand more fish caught in the area upstream of that in Washington waters.
5

6 Commissioner Akenson said she is interested in what else is happening in that upper
7 basin in Oregon where the Snake comes back around out of the state back in the state
8 related to the Columbia Basin allotment because it has been connected. It is difficult that
9 sometimes things are only mainstem and sometimes we're talking about the entire basin.
10 She said we need the consistency to get the data from the entire basin as well if that is
11 part of the allocation changes.
12

13 Bowles reiterated that the CRE touches everybody that is fishing salmon, steelhead, and
14 sturgeon in the Basin. The allocation is set up in rule for this reform to the sport versus
15 commercial. There are processes either ongoing or past that allocate that sport above
16 and below Bonneville. It is a proportion so the benefit is that more catchable fish are
17 moving up. So even if those allocations above and below Bonneville stay the same the
18 pie is bigger for the sport. If they're getting 20% they are getting 20% of a bigger pie of
19 available catch. What is in play are changes to that allocation through the Ad Hoc
20 discussions because the upriver folks are discontented with the upriver formula.
21

22 Commissioner Akenson said the guideline is the number of fish to be harvested?
23 Bowles said typically the guidelines relate to once you have your allocation of impacts
24 then you calculate from there based on the projected run size how many fish you can
25 harvest. In the case of the guidelines, harvest and kill through handle mortality becomes
26 a guideline number that then funnels through the fishery structure that occurs.
27

28 Commissioner Akenson said this year we had fisheries less than 100% of the guidelines.
29 Does that just happen or do you add days to increase the fishing opportunity to get
30 closer to that guideline? She asked aren't guidelines almost always met.
31

32 Bowles said the guidelines are established pre-season. As the run materializes the
33 impacts that are taken can change, so if the run size proves to be lower you might not
34 catch as many fish to hit the guideline. There are numerous reasons why you may not
35 get to the guideline; very little of that is related to the rules that the Commission adopted.
36

37 Nigro said the guidelines are the amount of fish you have to work with. On the
38 recreational side their share allows us to structure the fisheries within the constraints of
39 those fish we have to work with. With respect to how the fisheries perform relative to the
40 guidelines that is a function in many cases to rivers conditions. When we construct a
41 season we make assumptions about the amount of effort and how many anglers will be
42 out there and what their catch rates are going to be. To the degree we come close to
43 those then the fisheries perform as we assumed. Nigro said with respect to how we
44 manage relative to the guidelines it depends on the season. For the spring run staff
45 makes guesses prior to the run size update and after the run size update, we may have
46 fish left over that the catch rates and the effort are not enough to use those fish even
47 when we open the season fully. That is what happened this year.

1
2 Commissioner Akenson said is that also true with the allocations of commercial
3 fishermen, like in the fall where they could have taken more fish? Was that more the
4 conditions or lack of fishermen out there?

5
6 John North said there are a variety of factors such as water conditions. He said some of
7 our guidelines are just flat percentages so the quota changes with the run size. Others
8 are based on an abundance based matrix where the available impacts change in steps.
9 Not only is the number of fishing changing but also the percent that you are allowed to
10 take and that applies to spring Chinook. He said that applies to both sport and
11 commercial this spring; we ended up over one of those steps and it was not clear until
12 late in the season what we truly had.

13
14 Commissioner Wolley referred to the money allocated to counties to help commercial
15 fishers adjust their gears. He said what is the Department's involvement with the
16 counties? How autonomous are the counties in developing their own processes, for
17 instance developing requests for proposals and evaluating proposals for funding. Does
18 the Department want consistency with that from county to county?

19
20 Bowles said that program will be developed but staff still needs to get input from the
21 counties and work closely with the commercial fishers. We hope to have something to
22 the Commission this spring. These monies are in a fund within ODFW and will be
23 allocated through grants to the county to administer their program. The statute has
24 prescriptive requirements relative to the oversight committee that the county establishes.
25 There are criteria on eligibility and how you assess harm relative to the rules causing that
26 harm. The agency is not interested in micro managing the program beyond getting the
27 Commission a program that you can adopt. We do not plan to be arbitrators. It is clear
28 through the Legislature there is an expectation of good governance and use of the
29 state's monies; this will be subject to a legislative audit.

30
31 Commissioner Anderson said she appreciated understanding better the term
32 "guidelines". A lot of what she looks at in terms of metrics is - are we meeting the
33 expectations - those economic models we generated last year. She asked, we are using
34 expectations today in terms of what historic and our current guidelines are, they don't
35 relate to what the economic models we're suggesting for 2013 - 2014.

36
37 Bowles said Tony Nigro referred to Table C4 and C5 in the Work Group process. Those
38 are model runs based on looking backwards on average conditions telling you what
39 current is then projecting forward based on proceeding forward with allocation shifts and
40 the additional fisheries due to alternative gear. Those tables are not criteria; the only
41 criteria that the Commission spoke to for the transition period came up in the Work
42 Group process, which is assuring there is no more than 5% economic harm to the
43 commercial fishers during the transition period.

44
45 Commissioner Anderson said we only met 30% of the expectation for the coho fishery. Is
46 that just limited to the mainstem? Bowles said yes and it is an aggregate. He would not
47 want the Commission to assume that Table C4 and Table C5 are criteria because those

1 are based on averaging that are caveated with run size. You can reference those tables
2 relative to how we are performing and are we on track.

3
4 Commissioner Anderson said we are already in a danger zone here with mainstem coho
5 based on the slide *2013 Commercial Ex-Vessel Value* at \$122,005 (see bottom slide,
6 page 17). If we left 70% of that behind that is about 10% of the value of that mainstem
7 fishery unless you say that it was low runs. If we even hit the 60% that the recreational
8 fishery hit that would still be about a 5% overall impact to the mainstem fisheries. She
9 said it would behoove us to really look at the coho fishery. If gear access and availability
10 was a big issue here in terms of low participation for that fishery that 8 days of tangle-net
11 fishery and 5 days of gillnet apparently they were concurrent. How does that compare
12 with how we structured the fishery in 2012 in terms of tangle-net versus gillnet. Was
13 there a change there? If so, could that affect the participation? She said it could just be
14 that the success of the fall Chinook fishery displaced fishers who were going for slightly
15 more lucrative or valuable fishery run size. When I see 30% of projections and I look at
16 the value of that mainstem fishery we are already pushing a margin there. She asked
17 staff to ask those questions in the Columbia River Commercial Advisory Group to see if
18 we can understand better rather than just low run size what our factors could be there.

19
20 North said this was a brand new fishery that didn't occur before this year. Some
21 fishermen may have wanted to wait and see how much time we would give them. These
22 seasons were not set until after close to October. Several days before the season started
23 there was heavy rains and the fishermen knew the fish were on the move and it was
24 hunting season. We had an average of 22 deliveries and had expected 60; about \$5,000
25 per fisherman on average. The web for a net costs about \$1,800; a total net costs about
26 \$4,400. He said this coming year looks better for coho and they have more information
27 on whether to invest in an economic plan.

28
29 Commissioner Anderson said perhaps that is where the transition fund will come in
30 useful. She noted that Off-Channel Enhancements for 2013 and 2014 did not list Youngs
31 Bay; it is a major player in the off-channel areas (see page 5, Attachment 1 – Agenda
32 Item Summary). She noted there was also a deviation in the numbers of coho to be
33 released in their packet versus Nigro's slide (see Off-Channel Enhancements – New
34 Oregon Production in 2014, page 5).

35
36 North said Youngs Bay had less room than the other sites did. It is the largest facility
37 and been closer to being maximized. Commissioner Anderson said it's at full capacity?
38 North said yes it is closer to full capacity than the other sites were. When you add the
39 fish by default they had to go to the other sites where we had more room. He said there
40 is also permitting issues involved with all of this. You can only raise so many fish at that
41 site in terms of poundage and there are also land leases.

42
43 Commissioner Anderson said the metrics looks at the number of angler days
44 predominately. She asked to see a metric for license sales to see if the same fishers are
45 taking more days in the year or if there are new entrants coming into the fishery. This is
46 to help the Commission understand the social and economic impacts of this allocation
47 shift over time.

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Bowles said staff will track that information the best they can. In the past we could not tell by license purchases where people were fishing. With the CRE we will now be able to tease that information out better but it will certainly not be the full answer.

Public Testimony:

<p>Bruce Polley Sherwood, Oregon</p>	<p>Bruce Polley, Coastal Conservation Association (CCA), distributed written testimony, and said CCA believes:</p> <ul style="list-style-type: none">• Sport fishers have “paid forward” in many different aspects of this policy to show their commitment to the future of their fisheries. Many feel they are bearing the brunt of reforms thus far and with uncertain benefits.• CCA shares the same goal of showing positive benefits of these policies to recreational anglers who are critical to the success of these reforms. Doing a better job talking about positive changes coming for recreational fisheries and providing common sense relief and consideration to sport fishers will accomplish this goal. <p>Polley asked the Commission to consider these aspects:</p> <ul style="list-style-type: none">• Barbless hooks on Willamette. If a mortality benefit exists by switching to barbless, show the benefit and apply it to the release mortality rates assigned to sport catch and release. CCA has seen no reduction in the release mortality rates assigned to recreational fisheries as ODFW study results from spring Chinook do not show a mortality benefit. CCA asks the Commission to remove the barbless hook requirement on the Willamette River <u>only</u>, which can be accomplished irrespective of any decision related to the Columbia.• Youngs Bay Closure Zone. CCA sees this closure zone as another “pay forward” of loss of fishing opportunity before any benefit is realized to sport anglers. ODFW has wide estimates of how many SABs will pass into the terminal fishing areas if this closure were made: 9% to 35%. But those SABs are currently caught by both sport and commercial fishers all over the lower Columbia estuary.• Recreational fishers are now required to pay a fee that pays for increased production of these very fish they are being restricted from fishing for.• Youngs Bay closure was inserted into SB 830 at the end of the legislative session to foster commercial support of the new policies – but that support has never come.• CCA asks the Commission to consider adopting the closed area, but not “implementing” it until 2016; further into the transition period when commercial harvest of
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	<p>these fish becomes more necessary in the transition plan. Another option is: make an additional small increase (7-9%) of SABs so the real reform goals are reached; and increased sport and commercial harvest is achieved. Under adaptive management the Commission can remove the closed area once increased production is realized.</p> <ul style="list-style-type: none"> • Sport Fishing enhancement. The sports side has transferred smolts to the terminal areas, is paying additional fees, took on gear changes with no mortality rate adjustment, and now is being asked to not fish in a popular area of the Columbia River. CCA asks the Commission to support projects designed to specifically benefit sports fishers, for instance new production for sport terminal fisheries or projects that would create public/private cooperation to produce more fish for sport harvest in areas not sensitive to wild fish impacts. • CCA asks the Commission to encourage staff to explore sport fishing enhancement opportunities. • White Sturgeon. CCA has been in front of both the Oregon and Washington Commissions regarding the alarming decline of white sturgeon in the Columbia River system. CCA asks the Commission to not reverse itself by allowing harvest of White Sturgeon in the LCR system.
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2 Commissioner Wolley asked for clarification on Mr. Polley's letter and the statement that
3 the Youngs Bay closure was inserted into SB 830 at the end of the legislative session.
4 Polley said that Youngs Bay closure was discussed during the bi-state process but was
5 not adopted. The reason it is going to need to be dealt with by the Commission soon is it
6 was legislatively inserted into SB 830.

7

<p>Bob Rees Tillamook, Oregon</p>	<p>Bob Rees, President of Northwest Guides and Anglers Association (NWGAA), spoke to the Youngs Bay bubble exclusionary zone since he will not be present at the Commission's February 7 meeting.</p> <ul style="list-style-type: none"> • It's a tough pill to swallow to have an exclusion zone for this fishery. • NWGAA would support a Hwy. 101 closure. They understand there has to be an exclusionary zone as required by SB 830. The Hwy.101 closure would still allow an exclusionary zone for some fish escapement into Youngs Bay. It would also harm some of the local sport fishing fleet, particularly the small boat fleet that participates even though there are a limited number of people that do that within Youngs Bay. • Anything larger than that would add more burden to the
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	<p>small boat fishery as a safety factor and for large boats.</p> <ul style="list-style-type: none"> • In the Youngs Bay area they fish intensively for the first 10 days of August because the SABs come into Youngs Bay starting mid-July to mid-August. There is an exclusionary time already when the sports fleet does not have access to SABs until August 1, and there is a gillnet fishery inside Youngs Bay harvesting some of those SABs. • Next month the Commission will hear how much this area actually encompasses. ODFW and WDFW have determined that the area originally proposed the green buoy line up to Hwy. 101 and down to the mouth of the Skipanon River encompasses 5% of the Buoy 10 fishery. Although that may be true from an area standpoint what's not true is it is not 5% of the fishable area. Much of the Buoy 10 area is a large sandbar and we fish in the channels and deeper areas. He said the percentage of fishable area would be considerable greater. <p>Rees said the sports fleet has already endured quite a few lumps through this process without realizing much of the benefit of the policy shift. We are paying the endorsement fee, the production shifts that have taken place from other tributaries (Sandy River), and the barbless hook.</p>
<p>Trevor Storli Corbett, Oregon</p>	<p>Trevor Storli, Red's Guide Service, a fishing guide for 20 years has a house in the Gorge and one in Astoria. He said he worked with ODFW and WDFW on the tagging of oversized sturgeon in the Gorge and participates in the keeper fishery in Astoria. He asked the Commission to:</p> <ul style="list-style-type: none"> • Base their opinion on science and not emotion. If you look at the numbers our population has increased. As sport anglers in the past, they have gone from a seven day per week fishery down to three days per week. They have taken cut after cut on these fish but looking at the numbers they have almost doubled over the year; they are increasing. • In the upper sanctuary where the big fish spawn five miles of that was closed for them to have a sanctuary. We are starting to see the effects of that. <p>Storli asked the Commission for a small sturgeon season in Astoria if we can get it economic-wise for the guide fleet. He said it will be devastating if the Commission shuts it down. Regarding conservation, if it is critical most of the guides agree we need to conserve these fish as far as possible. He said all of a sudden this is a critical situation and he doesn't</p>

think so. He is on these fish every day and it is not at a critical stage that everybody believes.

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2 Acting Chair Finley asked when the Commission will have the new data on sturgeon
3 populations. Director Elicker responded that staff showed that today in their presentation
4 but could revisit that after the public testimony today. Acting Chair Finley said at some
5 point we should revisit the closure in terms of the numbers and the science.
6

William Hunsinger Astoria, Oregon	<p>Bill Hunsinger, Port of Astoria, has a history in commercial fishing. He said the biologists who come up with these numbers have not addressed the mouth of the Columbia River to Tongue Point and above is the number one rookery. They can't give you the mortality rate with a seine, 400 or 600 pounds letting a line drag down the beach, and they never did a mortality study on them. He said it's ridiculous.</p> <p>The sports fishery is enjoyed by many people but a lot of them don't fish salmon; they like the sports crab fishery at the mouth of the CR. He said guys he has talked to that seine under this test program say their lead lines come up full of soft female crab and they are destroying that and that's a rookery. There should never be a seine in the CR and never a seine in the LCR from Tongue Point down that hurts another fishery. For the sport and commercial fisheries those crabs come into the river above the Megler-Astoria Bridge. If he puts his crawfish pot in overnight two miles above there he can show you about 200 small crabs. He said nobody is going to believe the mortality rate on those if you drag down the beach under water because they are not going to stick. That is something that these people (staff) need to take a closer look at. Seventy years ago they got rid of seining because it was killing these crabs. You guys are going to have a problem. He said that crab association has a lot more money than the gillnet fleet so they are not going to approve of this. Hunsinger asked the Commission to take a closer look at this before they approved any seines below Tongue Point.</p> <p>Hunsinger said the biologists put up a number of 300,000 smolts that are going to be put into Youngs Bay. In Astoria two days ago one of these biologists told me that .085% or 1% will not return as adults. Are we looking at possibly 2,600 fish coming back through the sports fishery in the Select Areas? Under ocean conditions they can't guarantee anything. They don't show where it is over 1%. He said if you have 3,000 fish and 100 fishing there for two months</p>
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	<p>then the average per fisherman inside the ditch will be 30 fish. That doesn't even pay the fuel for one week in Youngs Bay for small boats.</p> <p>Hunsinger asked how the Governor's plan expects to come in and tell you this is going to be a money maker when they just told you we can't put any more fish in Youngs Bay. A disease of the spring salmon smolts they put in there will hurt the return of spring run; same thing happened in Blind Slough and 520 fish were caught by the commercial fishery.</p> <p>Hunsinger asked the Commission to not add any more off-channel Select Areas. He said the best method to fix this is defining Zones 4 and 5 as a Select Area. He asked the Commission to look at the article he distributed <i>Seines may need sport-fishing closures in Columbia</i> by Allen Thomas, Columbian outdoors reporter. He said we don't want this beach and purse seine fishery.</p>
<p>Otis Hunsinger n/a</p>	<p>Otis Hunsinger, a commercial gillnetter, said this will drastically affect him. In the winter he also fishes for crab. When you catch these crabs they are so soft that if you drop them back into the water they float. He stopped crabbing because when these crab get soft they are vulnerable. One female crab can produce millions of crab. If we start dragging the seine on something nobody is too concerned about we are going to wipe out that crab fishery.</p> <p>Regarding the bubble, he spoke to Mr. North when the test fisheries were being performed. They were laid out a couple of hours before he got to lay out his net to fish in the Select Area that he makes his living in. When you have staging areas in the deep water, now you have a seine fishery that will lay gear out in front of me before I have a chance to catch those fish in the terminals that we are paying for to raise. You have the seine fishery that is capable of catching tons of fish and hatchery fish, marked fish, that both the sports fishery is supposed to catch and that we are supposed to catch. He said they are letting go of impact fish and a bunch of fish we're not trying to harvest. Now, when we fish upriver in Zones 4 and 5 on a run of a million fish, you are taking 23% of our allocation and giving it to these seine fisheries; these test programs that we have no idea of the mortality on the crab or the salmon or the larvae of the smelt, an endangered species, that lay on the banks that these seines will go across.</p>

	<p>He said “Group B Steelhead” allow us to catch 50 of those B steelhead for this upcoming year of 2,500 that will pass through. If that pilot seine program goes through and catches too many steelhead, I’m in jeopardy of losing my whole upriver fall fishery. He does not want the seine fishery to happen and does not want the seine to go in a place marked where we really have no idea the capability of the seine and catch those 50 steelhead. It will affect both the sport and commercial fishery because as soon as those 50 fish are caught there is no fishing on the Columbia River.</p>
<p>Jim Wells Astoria, Oregon</p>	<p>Jim Wells, commercial fisherman and President of Salmon for All (SFA), distributed a map of Youngs Bay and spoke to the following:</p> <p><i>Youngs Bay Control Zone.</i> On the map a line starts at the Nygard Dock and goes out to green buoy 27 and follows the green line up to the Bridge. This is a Control Zone that we are proposing and is very important to us. It protects rogue salmon and silvers going to Youngs Bay. For rogue salmon Youngs Bay is the only place those fish are raised and return to.</p> <p>Wells read verbatim an article from the Daily Astorian, Friday, August 2, 2013, about a Buoy 10 kick-off. He said guys have figured out where they can get these rogue salmon that are returning to Youngs Bay and the mainstay of that gillnet fishery. The guides line up right outside there and you fish inside and look out through the Bridge and can see them there. Wells said if all we are going to have is those Select Areas the Commission needs to give us some protection. It is true it is about 5%. The Buoy 10 would still retain 95% of their area and that sandbar Rees talked about has already been subtracted out and calculated for.</p> <p>Wells talked to the Astoria enforcement and they said no problem enforcing that. It is very easy for them with that buoy line because it is a line of sight. You draw a line anywhere inside of there and where there is no line of sight it is going to be very difficult because if you don’t have a line of sight you better have a plotter on the boat. Most of the guys on a small boat don’t have a plotter.</p> <p><i>Safety.</i> Wells said the boats would be north of the channel and the green lines on the north side would be north of that and all out of the ship channel. It is better for them for safety.</p>

Weather is too rough. Wells said the northwest wind is predominate that time of the year and blows right in there. A southerly wind this time of year is predominating down there. Sometimes it is too rough in lower Youngs Bay for even a gillnet boat so a small boat should not be there if it is blowing 25-30 northwest. You go over to the north side to fish where there is good fish and get out of the wind.

Select Area expansion. Wells said they are testing right now outside the Bridge, pushing the Select Area boundary out. If you draw a line inside of this one there is going to be no bubble at all left if the Select Area boundary moves out.

Wells asked the Commission to read a letter by Steve Mathews in their packet (see Supplemental Public Correspondence as of January 10, 2014) about what a seine fishery in the Columbia River is likely to look like. He said they admitted there is significant handle of sockeye in seines in the summer and steelhead in the fall.

Wells said Otis (Hunsinger) referred to Group B Steelhead; it's a 2,500 fish run this last year. There is a 2% exploitation rate associated to that run and that's 50 kills. But he thought it was 50 kills for the gillnet fleet but it is not. It is like 20 kills for the gillnet fleet because that 50 is recreational and commercial shared. So, all Zones 4 and 5 fishery is hinging on those impacts not getting burnt up before we get to fish. You put a seine fishery down in that lower river in the wrong timeframe they could easily kill those fish and preclude our Zone 4 and 5 fisheries. He said the Tribes are also constrained by that run of fish and they are very concerned about that.

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2 Acting Chair Finley asked if Mr. Wells had observed any of the tangle net fishing for
3 coho. Wells said not for coho. In talking to the guys a lot of people didn't do it because
4 they would have to buy another net now that they won't get to use. We want to see how
5 this goes and how much fish is allocated to it. Based on the numbers that Mr. North gave
6 you, which are accurate, by the time you paid for your \$1,500 - \$1,800 net, gas, and a
7 helper you are lucky to break even. The nets are so light that fishing in the daytime they
8 are a one year throw away net and you have to replace them to fish next year. We want
9 to enhance that fishery and see it work but it needs to be operated earlier in September
10 when there are more fish to catch.

11
12 Acting Chair Finley said can you make that a heavier gauge so you don't have that one
13 year liability? Wells said the problem is at that time of year the river is usually low and
14 clear and you're fishing in the daytime. Our traditional silver (coho) nets are a light ply

1 mono net that fishes in that clear water. If you make the net any heavier and more
2 durable you are likely not to catch many fish because they see it.

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<p>Liz Hamilton n/a</p>	<p>Liz Hamilton, Executive Director for Northwest Sportfishing Industry Association (NSIA), highlighted NSIA's positions:</p> <ul style="list-style-type: none">• Agrees that a very good signal to the anglers that ODFW does care about the economics and the licensing sales that goes with sport fishing would be to revisit barbless hooks on the Willamette. Unless there is some ESA consideration it should be looked at again.• Regarding the exclusion zone, ODFW reported to the Northwest Power and Conservation Council and BPA several times on the economics of the money invested in SAFE areas. The first report did not pencil out very well and concerned the Council. The second report penciled out fabulously because they took a broader look and at the economics of the recreational fish caught that are returning to the SAFE areas. When working from how to enhance conservation and economics in the river, NSIA urges you to keep that in mind.• Hamilton attended the hearing in Salem when the committee chair did say that the exclusion zone was being placed in SB 830 in order to gain neutrality from Salmon For All, which unfortunately did not happen. Mr. Polley was accurate in that statement as well.• We have front-loaded the sports side of this especially with a big endorsement fee coming into place without folks really seeing much benefit for a couple of years. It's after 2016 that the real sports benefits will kick in before they will be measurable. She likes the use of angler trips and loved Commissioner Anderson's recommendation to find ways to look at license sales as well. Do look at angler trips because people spend money every time they take a trip and put money into our economy.• We are making cuts on sports side and to the extent that the agency can partner with the industry in tourism and the Oregon Marine Board to do promotion on the sports side, such as catch and release of sturgeon or the fisheries not fully utilized and important to communities.• Exclusion zone in Astoria that early fishery is putting people into hotel beds in the first ten days of August. It did not use to happen so it is an important piece to tourism and the sports industry.
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1 Commissioner Anderson asked what the average expenditure was per day for a
2 recreational fisher used in the economic benefits modeling. Hamilton said she thought
3 ODFW's number was close to \$60 per day. The figures by Southwick & Associates found
4 it closer to \$115 per day; a guided trip goes way up from there. Those visitor dollars
5 we're bringing into Astoria have the greatest value added but it ranges.

6
7 Commissioner Anderson asked if there was a number of how many average days an
8 angler will execute during the year. Hamilton said depending on the fishery, if you looked
9 at spring Chinook on the Columbia and mainstem since 2001 it is nine days per fish.

10
11 Commissioner Anderson said in reading the overview by the staff it is not unreasonable
12 that a person may be spending \$1,000 a year to sport fishing plus. I keep hearing from
13 Polley, Rees, and you that this \$9.75 fee adds a front-loaded expense to the recreational
14 fishing industry. This seems like a really small percentage to me; a \$10 annual fee in
15 looking at what an average angler will probably spend over the course of a year.

16
17 Hamilton said where this is really hitting is families, a family of four that goes to buy
18 fishing licenses and its up. Many folks are happy to pay more and get more but this is a
19 pay more and get more in a couple of years. If we can, start crafting seasons to get
20 people excited and get them fishing so they realize the benefits of that extra money.

21
22 Commissioner Anderson said a fee is a fee and an increase is an increase, but she
23 sympathizes with those that are facing several thousand dollars a year to modify gear to
24 tanglenets, much less \$100,000 to switch to a seine fishery.

25

<p>Mike Wullger Astoria, Oregon</p>	<p>Mike Wullger, commercial fisherman, reiterated previous testifiers and said:</p> <ul style="list-style-type: none">• SB 830 is very important to him. He has fished 35 years in the Columbia River; starting out in Young's Bay when he was 13 years old.• The zone or bubble needs to be meaningful. He referred to Mr. Rees comments about Hwy. 101 and the Bridge and having a bubble on a mudflat where they don't fish to begin with. He said it is meaningless.• Wullger referred to Jim Wells' map and said the green line is a visible line that runs up towards the Bridge; you can eyeball it. It's easier to enforce and easier for a sports fisher to see where he is at and in compliance. He has fished lines in Alaska and the Columbia River; everywhere he goes he deals with lines.• Regarding safety, he has been in lower Youngs Bay when it was rough with northwest winds blowing and he cannot stand up in the bow. But that is his decision to keep laying out the net. That's his job but if sports fish with the family he won't be out there if it's blowing hard.• His dad always told him to have a business plan. He
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	<p>planned for Alaska and the Columbia River ordering nets for the upcoming year and developing strategies for fish runs and where he will cut back. Regarding seines, if he wanted to participate he would not know where to begin because nothing is settled. There are no monies to be had, no what type of seine do you need, how many meshes, what are the restrictions, and who gets to participate. It's a mess. How can I make a business plan without knowing? How could I go to a bank to finance a seine operation and bring the banker nothing – just some graphs that the State has up and then expect them to loan me money? He said there is a lot of work to be done here.</p> <ul style="list-style-type: none"> • Wullger said that exclusion zone is very, very important to us. We sit in there and it does give a break to those fish. The sports will catch some of those fish below, outside, and above us. It gives those fish a break in the deep water where they like to roam and stay out of the warm water until they are ready to come. <p>Lastly, Wullger said he tanglenetted for coho.</p>
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Commissioner Webber asked Wullger how he did on the coho.

Wullger said the web was about \$1,800 and a guy hanged it for \$400. I fished every opening except for two. The east wind was blowing so hard I had to quit. Right off of Astoria, the influx of seals down there is terrible. He fished the five openings and kept moving upriver and got above Tongue Point but the seals destroyed his light ply net. Wullger said he grossed about \$3,000, so with the net and fuel it was about a wash. He would like to see that fishery work because it is one man and it was his gillnet boat and he did not have to buy a seine boat. He said some of the fishers upriver in the Longview area got away from some of the predation; the river narrows down and they caught a few more fish. We would have had more fish in Astoria if it would have opened about two or three days earlier. We had a wind storm and there was fish in the lower river but the wind blew them out of there.

<p>Steve Fick n/a</p>	<p>Steve Fick, for West Coast Seafood Processors Association (WCSPA), said he was sorry for having to bring forth the lawsuit; he believes in collaborative efforts to resolve differences. He said:</p> <ul style="list-style-type: none"> • He is always supportive of looking at new methods and ways of harvesting fish. Twenty years ago he worked with ODFW to try a beach seine to harvest fish we could not access commercially with a gillnet. Where the net pens are today he donated those 20 years ago to CEDC project; the land lease that he owned. He is in this to build
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	<p>our fisheries for both commercial and recreational.</p> <ul style="list-style-type: none">• He doesn't have a problem with the 30 days that he fishes recreationally to pay another 30-cents per day – the \$9.75 if somehow it is going to help.• With the CEDC project, those fishermen in there which primarily of the 150 active commercial fishermen, about 60 to 70 participate in that fishery during the year have donated voluntarily over \$500,000 a year producing fish for both commercial and recreational users. They worked collaboratively to build these runs back and had over a million fall fish. They never dreamed they would have over 400,000 to 500,000 sockeye and over 100,000 upriver fish again in the spring. We had recreational and commercial fisheries in the summer we hadn't had in 50 years and we did this together.• He said now a user group –us – is asked to step back and under this new model, SB 830, it really appears it can't work. Fick is a fish processor primarily and if he gets the same amount of fish he would do it but that is not what is happening. Already this year we are in violation of SB 830.• Fick said Bowles came up here and suggested that we're to put more fish into these Select Areas if there was not a stay. We clearly made it understood that as in the past, they have taken fish in and out of there, we have no objections to putting fish into these Select Areas. We were not trying to encumber something that was positive for all user groups.• The volume of fish you are putting in these Select Areas is not significant to take the place of the 85,000 fall fish that we just caught in Zones 4 and 5. There is no way that your staff is going to produce and tell you that you are going to be able to produce another 60,000 to 70,000 fall Chinook in Youngs Bay so that we keep that within five percent (5%) of where we are today proportional to the recreational opportunities. At the time, Chair Levy said you will not lose less than five percent (5%) ever.• We have not got the information for these fishermen on what type of gear, what type of seine, or who gets to participate. It was understood everybody would get an opportunity at what time; now they are talking about a select few. You can't just tell somebody – go fishing now. They have to order a net and have all the infrastructure in place and that takes several months to do that. We are not even close to that.• We should try the seines if that is the way the law says we
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	<p>need to try it. Fick said we will see what happens in court; that's not over yet either.</p> <p>Fick thanked Director Elicker and staff for coming to Astoria and meeting with Salmon for All. I don't know if he made it clear but our mayors of Astoria and Warrenton and members of commerce clearly made it clear that they opposed this plan as written. There has been many times and efforts to the particulars of this plan that could make it work more palatable for those being affected directly by it.</p>
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1
2 Commissioner Webber referred to the comments about the crabs and the seining. Has
3 staff looked at that?
4
5 Bowles said one thing that is not explicit in our metrics we are tracking is the ecological
6 impacts of the different gear types. We look primarily at the fishery impacts of bycatch
7 and the targeted effectiveness of that. Staff does tract and documents what comes into
8 the nets. A lot of the alternate gear research was conducted by WDFW up until last
9 summer. He said there is no doubt the Columbia River estuary is an important area for
10 juvenile crab and the fishery itself. There are nursery grounds for many types of species.
11 He said to track that and to figure out whether the footprint overall relative to the seines
12 is important to the Dungeness crab fishery and ecology is something our Marine
13 Program could look at. The further down you go in the estuary the more potential there is
14 for impacts relative to the crab importance. Regarding the volume and where they are
15 located, it will be a function of how many actual seiners we end up with after the
16 transition period. Because of river conditions probable the majority of that will be above
17 the Astoria Bridge; once you get up there the impacts on the crab are likely to be less.
18
19 North said all of the fall seine research has been conducted by WDFW. He has not seen
20 the data sheets but it is standard practice to record just about everything that is caught.
21 He said most of their seining and most of our work occurred upstream of Tongue Point,
22 so we don't have that much sampling effort down in the lower estuary.
23
24 Commissioner Wolley asked would crabs caught in nets actually be any real indication of
25 crab mortality because of nets dragging on the surface. Bowles said it would be a
26 combination. Depending on the stage of their life they would be more or less vulnerable
27 to the impact of the bottom contact of the lead line. Those more developed you would
28 likely be entangling them in that net. At fairly smaller life stages they would drift right
29 through after they were impacted. He said this is something we should talk to the Marine
30 Program about to get their initial assessment on this. Commissioner Wolley said he
31 would be interested in hearing from them.
32
33 Acting Chair Finley said this is an important issue that the Commission should come to
34 some conclusion. When we are doing gear analysis it should include associated impacts
35 on other species. After asking the other Commissioners if that was their sense as well,

1 he said the Commission is unanimous and asked Director Elicker to get something built
2 into the system that as we do gear analysis we actually look at the surrounding impacts.

3
4 **Exhibit F: FISH SCREENING TASK FORCE MEMBER APPOINTMENTS**

5 Pete Baki, Statewide Fish Screening Coordinator, said the Fish Screening Task Force
6 (FSTF) advises the Fish Screening Program on development, funding, monitoring,
7 technology reporting, and project prioritization. FSTF has seven members that serve two
8 year terms with the possibility of serving three consecutive terms. He discussed the
9 background of the applicants. Baki said staff recommends Doug Markle be appointed to
10 the Fishing or Fish Conservation Representative position and Les Perkins be appointed
11 to the Public at Large position.

12
13 **Public Testimony:** There was no public testimony.

14
15 *Action: Commissioner Anderson moved to appoint Les Perkins as the Public-at-*
16 *Large representative on the Fish Screening Task Force, and Doug Markle as the*
17 *Fishing/Fish Conservation representative on the Fish Screening Task Force.*
18 *Commissioner Wolley seconded the motion and the motion carried unanimously*
19 *by a vote of five.*

20
21 **Exhibit G: SCHEDULE OF DAMAGES FOR COMMERCIAL FISHING VIOLATIONS**

22 Aaron Jenkins, Economist, said every January staff sets the damages for unlawful taking
23 of food fish that the Commission may institute suit for recovery of damages for the
24 unlawful taking, possession, or killing of food fish. In ORS 506.720 there are values for a
25 few species that does not change from year to year: pink shrimp; salmon and steelhead,
26 ocean; and salmon and steelhead, freshwater, along with associated fines for different
27 violations. For other food fish not on this list, staff assesses two times the average
28 market value.

29
30 Jenkins said staff is asking the Commission to approve the updated average market
31 values that reflect last year's average prices as price per pound as reported by Oregon
32 commercial fish dealers. To fully represent the market value, the live price has been
33 used for species with significant live landings regardless of disposition. He said overall
34 only minor adjustments were made to previous year's prices is shown in *Revised*
35 *Attachment 3 – Draft Oregon Administrative Rules*. He noted two other changes:

- 36 1. *Attachment 1 – Agenda Item Summary* the third bullet under Analysis was
37 updated to remove the language "method of capture" and replaced with
38 "**disposition**".
39 2. *Attachment 3 – Draft Oregon Administrative Rules*, page 2, line 69, the term
40 "**(2012 porice)**" was corrected to read "**(2013 price)**".

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

43
44 *Action: Commissioner Webber moved to approve the Schedule of Damages for*
45 *Commercial Fishing Violations contained in OAR 635-006-0232 as proposed by*
46 *staff in Revised Attachment 3. Commissioner Akenson seconded the motion and*
47 *the motion carried unanimously by a vote of five.*

1
2
3 **Exhibit H: WOLF CONSERVATION AND MANAGEMENT PLAN**

4 Ron Anglin, Wildlife Division Administrator, said this is the last piece of implementation of
5 the May 2103 Settlement Agreement (the Settlement) and the resulting statutory
6 language in House Bill 3452 (HB 3452) from last session; the bill is a legislative product
7 of the Settlement. Both give ODFW the authority to take wolves while they are listed, and
8 it sets parameters for dealing with the Imnaha Pack and permitless lethal take. A
9 temporary rule was filed on October 1, 2013 to implement HB 3452 while in Phase 1.
10 Anglin said in OAR 635-110-0009, a temporary rule that dealt with the Imnaha Pack was
11 adopted by the Commission in October 2013. Staff proposes to delete that temporary
12 rule now. The timelines associated with the Settlement and the Imnaha Pack have
13 expired, so the Imnaha Pack will now fall under the full rules as adopted by the
14 Commission as part of the Settlement. He spoke to proposed changes:

- 15
- 16 • Preamble Section (635-110-0000) cleans up language associated with the
17 Department's address change, current dates, federal listing status, and legislative
18 changes.
 - 19
 - 20 • For lethal take in Phase 2, proposed changes resolve the inconsistency in the old
21 Wolf Plan that referred to the same provisions in Phase 1. Specific things
22 required in Phase 1 for permitless lethal take only applied to Phase 1, so staff
23 removed the reference in Phase 2 back to Phase 1. As part of doing that staff
24 wanted to insert the new permitless lethal take language in the statute.
25 Technically, staff did not need to do this because the statute overrides, but staff
26 felt it important within our rule to make it consistent with the statute.
 - 27
 - 28 • Removes Phase I reference in the Phase II caught in the act provision (635-110-
29 0020(5)) and incorporates the requirements of HB 3452 that removed permit
30 requirements for lethal take of wolves caught in the act of biting, wounding, killing
31 or chasing livestock and working dogs in certain circumstances. Statute does not
32 require chronic status or use of non-lethal measures before taking a wolf chasing
33 livestock in Phase 2.
 - 34

35 Anglin said it is possible that the new language in Phase 2 could occur while wolves are
36 still on the State endangered species list. We can rotate into Phase 2 and the
37 Commission may not have taken action to delist, so Phase 2 rules would apply even
38 while the wolf are listed once we move into Phase 2. The caught-in-the-act and
39 permitless take applies where wolves are federally listed in that portion of the state that
40 are federally delisted.

41
42 Commissioner Webber referred to the language in *Attachment 4 – Draft Oregon*
43 *Administrative Rules* and said when we're talking about non-lethal injurious harassment
44 under Phase I (see page 3) line 20 talks about ODFW considering the location of known
45 "den" sites. But the proposed rules for Phase II (see page 9, line 32) for non-lethal
46 injurious harassment states, "(B) ODFW considers the location of known wolf sites;" He
47 said they should be the same and read "den" sites.

1
2 Anglin said you are correct. He talked to Russ Morgan, Wolf Coordinator, and Legal
3 Counsel Erin Donald, and that is just an inconsistency in how the two lines were drafted.
4 It should read “den sites”.

5
6 Commissioner Webber said since the rules are open we can make that correction. Legal
7 Counsel Erin Donald said that is right.

8
9 Commissioner Webber referred to Attachment 3, page 10, line 4, and said section (5)
10 states, “Lethal take of wolves in the act of **biting, wounding, killing or chasing**
11 ~~[attacking]~~ livestock **or working dogs.** ~~[is allowed under the same conditions.....]~~” He
12 suggesting adding to the end of that sentence, “...**in the act of doing...**” The proposed
13 change ends with a period and just leaves you there without moving to the following
14 subsections (see immediately after line 5 the subsections on lines 6 through 24).

15
16 Legal Counsel Erin Donald suggested changing that to a colon (:) so it follows line 5.
17 Commissioner Webber suggested adding, “..is allowed by the following:..”. He said it is
18 more like a title to a section than a statement.

19
20 Legal Counsel Donald said if you look in the rest of the rules that is how they are. For
21 example in subsection (6) the sentence states “Lethal take to deal with chronic
22 depredation.” (See line 31). She said that is kind of a section title. Commissioner
23 Webber said if it is a section title that is fine. Before it listed by the following and this
24 change did not. Legal Counsel Donald said that is a stylistic issue and does not change
25 the legal substance of it.

26
27 **Public Testimony:**

William Hoyt n/a	Bill Hoyt, a fifth generation rancher and the Legislative Chair for Oregon Cattlemen’s Association (OCA), said he would like to support the proposed changes. We have been through a great deal over the last several years. During his former presidency of OCA they were able to pass legislation that created the wolf compensation fund. He said HB 3452 has made some correct adjustments. As we move forward to the Wolf Plan review for 2015, move to Phase II, and as the population increases, OCA is in favor of the proposed changes in the language presented by Ron Anglin today. He said OCA encourages the Commission to pass them.
Rob Klavins Portland, Oregon	Rob Klavins, Wildlife Advocate for Oregon Wild (OW), said they worked hard to make sure the Settlement went through the Legislature. OW is pleased that all the different parties have lived up to their commitments; there has been a lot less conflict and recovery of wolves. Klavins spoke to the proposed rules: <ul style="list-style-type: none">• The rules are only being considered because of the Settlement, but it goes beyond that by allowing citizens to

	<p>kill wolves that they claim have been chasing livestock with no additional caveats.</p> <ul style="list-style-type: none"> • In each of the last four years, the Legislature has opposed legislative efforts to kill wolves for chasing, harassing or other behaviors difficult to define after the fact. We know responsible people follow the law but there are some who might use such provisions to kill wolves under any circumstances and would make it difficult to enforce poaching laws as long as livestock are in proximity of those wolves. • Legislature as part of the Settlement included sidebars developed through months of negotiations. OW encourages the agency to limit itself to the Settlement between conservation groups, ODFW, and OCA. Doing so would confirm the leap of faith we all took in supporting the Settlement and letting the legislation go through. • ODFW can determine what levels of lethal, if any, are appropriate during Phase II of management. • The Commission has an opportunity in 2015 to make further changes during the upcoming mandated public review of the plan. During the last public review we had over 20,000 comments; over 90% of which were in favor of stronger protection for wolves. He said the trust is still a little tenuous but has been reinforced by all the parties since the Settlement was announced. <p>Klavins encouraged the Commission to limit itself to codifying the temporary rule from the Settlement.</p>
<p>Nick Cady Eugene, Oregon</p>	<p>Nick Cady, Legal Director for Cascadia Wildlands, distributed a handout with a proposed change to 635-110-0020. He said the Settlement was purposely limited to Phase I. This rule for the most part completely encapsulates that agreement but extends it a little bit to Phase II. He said our change only relates to the shooting of wolves chasing livestock during Phase II. It's an authority given to a landowner. He said CW suggests that ODFW with the understanding that in Phase II wolves are trending during delisting and the restrictions on lethal control are going to be relaxed and the requirements of non-lethal are going to be relaxed. We understand that and why we are not here to object to the proposed elimination that wolves be in a state of chronic depredation. We don't suggest that that exists in Phase II as the Department has suggested.</p> <p>Cady referred to the yellow highlighted language in his handout and said through this change ODFW would retain</p>

	<p>the authority to impose non-lethal requirements if it desired to do so. On a landowner we seem to use chasing in Phase II. This gives complete discretion to ODFW over whether non-lethal would be required. This doesn't just require non-lethal but gives ODFW the discretion to determine whether it could be useful in this specific circumstance. ODFW would have complete discretion over what non-lethal measure would be implemented. CW does not want to see a circumstance come out where this Commission has to do temporary rulemaking in the future for a site specific problem when you could just precautionary act now. This would not necessarily impose any requirement on any party; it is just a precautionary measure.</p>
--	--

1
2 Commissioner Wolley asked Nick Cady to summarize briefly how his proposed change
3 differs from the existing language. Cady said the proposed change only relates to the
4 chasing authority (created as part of the Settlement) and not the biting, wounding, or
5 killing authority that exists in Phase II. It would just give the Department the discretion to
6 require non-lethal if it wanted to. Commissioner Wolley said requiring that non-lethal
7 means it had already been conducted by the landowner prior to the kill or, as you say, a
8 precautionary measure going forward. Cady responded the provision would not require
9 that non-lethal be done; it would not require anything; it would just give the agency the
10 discretion and the authority to do so if it felt it was necessary.

11
12 Klavins said in HB 3452 in Phase I of Management there are non-lethal requirements to
13 kill a wolf that is seen chasing livestock. In the current proposal that would be entirely
14 stripped away in Phase II of Management. The key in there is "if any". It gives discretion
15 to ODFW to determine whether or not any non-lethal is necessary, without that ODFW
16 does not have the ability to require any non-lethal before killing a wolf.

17
18 Commissioner Akenson said where in HB 3452 wording does it say that the person
19 needs to first undertake non-lethal actions in Phase II? Klavins said HB 3452 does not
20 specifically address that but lays out requirements for Phase I but is silent as to Phase II.
21 The bill does begin by saying the Commission explicitly has authority in statute to put
22 reasonable restrictions on the chasing authority.

23

<p>Todd Nash Enterprise, Oregon</p>	<p>Todd Nash, OCA, said it was his calf that was killed September 22, 2011 by OR4 and one other wolf. Another calf was confirmed on October 5, the same day the stay was put into place. He has watched the Imnaha pack go from cattle herd to cattle herd killing. In the U.S. Forest Service where the timber is a little heavier one permittee reported that where he gathered 100% of his cattle for several years he is missing six calves and two cows. Another permittee is missing 12 cows and 12 calves. Nash said they had a range rider these last couple of years and it was very effective,</p>
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especially this last year. Now that we have gone through legislation and mediation and come to some agreement we are splitting hairs here. The fact that you would give authority to ranchers to take a wolf in Phase II without doing non-lethal in those big permit areas you are not going to do any effective non-lethal. It is important that the Commission empower these people so they feel like they have some authority with their animals. Now they feel powerless and the agencies have not kept up with the kill orders they have been given; 11 kill orders on the Imnaha Pack and two yearling wolves have been killed to date. Nash said we need to sew this thing up and put it behind us and move forward. Another step back is the aggravation between wolves and ranchers as it is right now has gotten to a degree that cannot be tolerated much longer.

Nash said part of the Oregon Wolf Plan was that there was going to be lethal. We have been very short on lethal on the wolves and really long on lethal on the cattle. A show in good faith is what was agreed to. He was not in on the Settlement but he has on good authority that those individuals that were these things were talked about and discussed and that was the way it was going to be.

1
2 Acting Chair Finley asked Ron Anglin to comment on Nick Cady’s proposed amendment.

3
4 Anglin said his concern is how do you decide from a discretionary standpoint who has to
5 do non-lethal and who does not? It puts our people in a very awkward spot in working
6 with landowners. Their intent is very good here but it would be a very difficult thing for
7 our staff to actually have to implement.

8
9 Anglin distributed *Enrolled House Bill 3452*. He said regarding discussions overheard in
10 the committee hearings by the legislators who sponsored HB 3452 it was very clear the
11 intent they expected was a relaxation in the requirements associated with the caught-in-
12 the-act permitless take in Phase II. They had very minimal restrictions to be put into
13 Phase II which is reflected in the language of the original bill (see Section (3)(a), page 1).
14 They said in Phase I that they had higher expectations and they laid those out. The
15 legislators said they wanted a permitless take to occur in Phase II and the only restriction
16 to be in place is Section (3)(a) (see Enrolled HB 3452).

17
18 Commissioner Wolley said is the provision to strip out non-lethal methods part of the
19 Settlement among the parties or did that not come about until the legislation was working
20 through committee? Anglin said the parties all ended up in the same place relative to
21 permitless take as part of the Legislative session after we got through our Settlement
22 discussions and agreed for there to be permitless take. The actual language was not
23 developed until the end of the Legislative Session. He said it is clearly written on what

1 applies to Phase I, but it is not clearly written on what applies to Phase II. What we have
2 gone back to is what we heard as the legislative intent by the sponsors and what the
3 expectations are in relation to the bill.
4

5 Commissioner Wolley said so it is reasonable to assume that the parties that bring the
6 Settlement process advocating for retaining non-lethal methods in Phase II are
7 potentially surprised or unaware that those non-lethal provisions would be eliminated in
8 the legislative process? Anglin said as we went through all that there were some
9 surprises in it. The Legislature made the decision that they were not going to tweak
10 anything as it was written and provided the direction on what their expectation was. Our
11 agency's perspective is consistent with what was discussed.
12

13 Legal Counsel Donald asked if Commissioner Webber wanted to include the word
14 "**mules**" in the definition of livestock that she and Commissioner Webber had discussed
15 earlier (see *Attachment 4 – Draft Oregon Administrative Rules*, page 2, line 22).
16

17 Commissioner Webber said yes, he thought the word "mules" was appropriate because
18 he would be upset if his mules were killed and were not listed.
19

20 Legal Counsel Donald said the intent in these rules was to adopt the Oregon Department
21 of Agriculture's (ODA) language for the definition of livestock in OAR 635-110-0010,
22 subsection (1) (see *Attachment 4*, page 2, line 22). We inadvertently left out two types of
23 livestock from our definition that is included in ODA's definition: "**mules**" and "**ratites**"
24 which is a large flightless bird, for example an Imu. She said it seems consistent with our
25 intent to include ratites and mules in the definition of livestock as they are DOA's
26 regulations so that that would be an amendment to add "**ratites**" and "**mules**" to page 2,
27 line 22, of the proposed rules.
28

29 Commissioner Akenson asked if it is appropriate to put that in though it is not part of the
30 legislative change. She thought the Commission was just voting on the statute changes
31 that they were required to make.
32

33 Legal Counsel Donald said we opened the entirety of these divisions and in our Notice of
34 Proposed Rulemaking we included that we were going to do a little bit of clean up, for
35 instance the federal delisting. For that reason it is properly noticed and we can do that as
36 housekeeping clean up measure right now.
37

38 *Action: Commissioner Webber moved to adopt the rules changes to OAR 635-*
39 *110-0000 through -0030 with the amendments of setting forth under the definition*
40 *of livestock to include the word "**mules**" and "**ratites**" on page 2, line 22, and to*
41 *additionally on page 9, line 32, change the word "wolf" to "**den**", and to adopt the*
42 *Plan addendum as proposed by staff in Attachment 4. Commissioner Akenson*
43 *seconded the motion and the motion carried by a majority vote of four.*
44 *Commissioner Wolley voted nay.*
45

46 **Exhibit I: USE OF CROSSBOWS**

1 Director Elicker said staff has had several discussions with the Commission on the
2 potential use of crossbows in some fashion here in Oregon, whether that would be part
3 of a severely disabled classification, or part of a general rifle or archery season or
4 combination thereof. Staff is seeking today some direction from the Commission as to
5 what they would like staff to do with this issue: generate proposed new rules allowing
6 the use of crossbows in some certain situations or not.

7
8 Tom Thornton, Game Program Manager, during a slide presentation provided
9 background on the discussion of crossbows:

- 10
11 • In 2010 an archery equipment review was held in to allow more technology during
12 archery seasons. At the Commission's June 2010 meeting, Leupold Stevens
13 showed a new bow-mounted range finder that led to more discussions about
14 lighted nocks and other issues. Director Elicker directed staff to review the
15 archery technology.
- 16
17 • Archery Review Committee (ARC) assessed different equipment types and their
18 effect on success during archery seasons: crossbows would improve success;
19 cameras would not affect success; and uncertain whether lighted nocks would
20 make a difference. ARC recommended no changes to the regulations. They were
21 concerned that any increased technology would reduce opportunity for
22 bowhunters. If they allowed one electronic device on a bow or arrow it could lead
23 to additional items being attached in the future.
- 24
25 • Individuals and sporting group members continued to ask for changes. In
26 September 2010, ODFW proposed to allow lighted nocks, bow mounted cameras
27 with no other features, and crossbows for a limited group of disabled archers.
28 Most of the public testimony was opposed to staff's recommendations, in
29 particular crossbows. The Commission did not change the archery regulations.
- 30
31 • In August 2013, the Commission attended a demonstration at BowTech Archery
32 on a variety of equipment types.

33
34 Thornton discussed the concerns:

- 35 • If crossbows are allowed during any one season there would be additional
36 pressure in the future to allow them during other seasons.
- 37 • Lack of ability for physicians to limit the number of individuals allowed receiving
38 any type of special use permit for crossbows.
- 39 • Regulations would need to be worded carefully. Oregon State Police would expect
40 more crossbows to be encountered if legal for game animals.

41
42 Thornton said 48 other states allow crossbows in different situations. There were 49 but
43 in December 2012 the experimental season expired in New York. Six states allow
44 crossbows in archery and rifle seasons; 16 states allow them during archery seasons; 23
45 states allow crossbows during archery season for hunters with disability permits of which
46 14 allow crossbows during firearm seasons with no permit; and three states have a two-
47 tiered age specific system. He went into more detail about the 11 western states who

1 allow crossbows in some situations. Thornton said he spoke to WDFW this morning so
2 he had new data for slide 9 on page 10:

- 3 • WDFW recognizes 74,000 individuals with disability status.
- 4 • 4,700 individuals have exception to use crossbows during archery season;
5 WDFW estimates that 3,000 to 3,500 are active.
- 6 • Oregon has 7,168 disabilities permit holders; 994 would qualify to be considered
7 for a Crossbow Special Use Permit, Oregon issues 10 to 20 Draw-Locks annually.

8
9 Thornton discussed concepts received at public meetings hosted by the wildlife districts:

- 10 • Crossbows for hunters with Disabilities Permits during archery season. Require a
11 Crossbow Special Use Permit in addition to Oregon Disabilities Hunting and
12 Fishing Permit. Physician statement that disability is permanent and why the
13 hunter is unable to use “adaptive archery equipment”.
- 14 • Most hunters generally opposed to allowing crossbows during archery seasons. If
15 you allow crossbows do so during rifle seasons.

16
17 Commissioner Akenson said is there a specific policy for disabled hunters and fishers? Is
18 it in one place or are there multiple places where our rules and regulations are
19 addressed to allow access to disabled hunters and fishers?

20
21 Thornton said most of the criteria for who qualifies for a disability permit are established
22 in statute. There are five categories ranging from lung capacity to heart conditions. In
23 question here, Category D deals with strength and the ability to draw and hold either a
24 fishing pole or a gun; there is one for visual acuity. In the Wildlife and Fish Divisions
25 there are places that address what opportunities are provided to hunters with disabilities.
26 For example, a provision that allows them to discharge a firearm from a road, or an
27 administrative rule expanding the bag limit to allow hunters with disability permits to take
28 an antlerless animal in some Wildlife Area Management Units.

29
30 Commissioner Akenson said it would be beneficial to see that in writing in one place. We
31 are asked to address this issue but we do not have the tools and information about what
32 ODFW is currently doing and what direction to go if you're interested in opportunities for
33 disabled hunters and fishers. She would like to have that packaged together before
34 making decisions or recommendations on how to change things.

35
36 Thornton referred to the *2014 Oregon Big Game Regulations* and said on page 88 under
37 *Oregon Disabilities Hunting and Fishing Permit Information* it lists opportunities and how
38 to apply for that program. He said staff can pull together something that would include
39 statutes and regulations in one place.

40
41 Commissioner Wolley suggested a pilot study prior to any enactment of rules and said
42 there were comments about what season to allow the use of crossbows. He mentioned
43 other studies done and said would a study with different groups and stakeholders yield
44 any additional information or simply reinforce the same opinions?

45
46 Thornton said when staff mentioned a pilot study in the past we suggested it would be
47 reevaluated in three years as to whether to continue the program or modify it. Are you

1 suggesting that crossbows be limited to hunters with disabilities but allowed to hunt
2 during both of those seasons to compare?

3
4 Commissioner Wolley said if there was a pilot study design it for crossbow hunters with
5 disabilities during rifle and archery seasons and get feedback from all the parties.

6
7 Director Elicker said rather than a pilot study he would ask that the Commission direct
8 staff to develop rules to allow crossbows by hunters with disabilities and add a three year
9 review period, at which time staff could bring the results before the Commission so they
10 could make any changes they think is necessary. He said we only issue 10 to 20 Draw-
11 Lock permits per year, so this is a very small sub-sample of disabled hunters that would
12 choose to take advantage of this at least in the beginning and this is a tiny fraction of the
13 total archer hunters. If that is the direction from the Commission, we would write those
14 rules very exclusively to limit that number to a very small number that might qualify for
15 these crossbows and with a clause that said there will be a full review after the third year
16 so the Commission had all the data from the seasons as they occur.

17
18 Commissioner Wolley said we do have a thousand hunters now that have disability
19 permits? Commissioner Akenson referred to slide 9 and said there are 7,168 with
20 disabilities permits. Commissioner Webber added that about 1,000 would qualify to be
21 considered for a Crossbow Special Use Permit.

22
23 Director Elicker said in our 2010 proposal you would need to have a Disability Permit; we
24 had hoped to go to a Crossbow Special Use Permit. He asked Thornton to comment on
25 the process to use Draw-Locks. Thornton said when a disabled hunter gets their
26 disability permit we require additional information in order to issue a letter of permission
27 to them to use a Draw-Lock that year. Director Elicker said we have a number of hunters
28 with a Disability Permit but not all of them are legally able to use a Draw-Lock.

29
30 Commissioner Akenson said but 994 could qualify. Thornton clarified there would be
31 about 1,000 in the category to at least be considered as eligible to apply for the
32 Crossbow Special Use Permit if we had such a permit.

33
34 **Public Testimony:**

Dana Perez Portland, Oregon	Dana Perez, Program Manager for U.S. Fish and Wildlife Service (USFWS), said he administers the Federal Assistance of which ODFW is a federal recipient. He does not allocate money but is involved in post reviews and consultation service to state fish and gaming agencies. He said: <ul style="list-style-type: none">• USFWS maintains an excellent relationship in that we have seen the State move in a direction that makes their programs, activities, and facilities more accessible every year to people with disabilities. It's a constant effort being made because it is required and the right thing to do.• USFWS has nominated ODFW for awards on three different occasions to three U.S. Secretaries of the
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	<p>Interior.</p> <ul style="list-style-type: none"> • ODFW has ideas from neighboring states and USFWS as to how to enhance access to the bowhunting or archery program and to a small segment of citizens in Oregon who are not able to use the traditional alternative methods in order to be present in the field with family and friends. • The crossbow is an alternative of last result as far as the USFWS is concerned in terms of providing their consultation to you today. • USFWS thinks that states that manage the crossbow program as a special use program make sure that the criterion that they use meets the objective. Which is to enable a small segment of society who have such extreme disabilities that they are unable to use traditional equipment can apply for and provide medical documentation that adequately substantiates that their physician believes that they should be made an exception to a rule that is normally applied to all the other citizens or visitors to Oregon who wish to hunt during bow or archery hunting seasons. <p>Perez thanked the Commission for being here. They have conducted numerous reviews and know the crossbow issue has been on the Commission's mind for some time. The Secretary of Interior is required by law to provide a reasonable amount of time for states or federal recipients to resolve issues like the one before you today.</p>
<p>Al Elkins Wilsonville, Oregon</p>	<p>Al Elkins, Oregon Hunters Association (OHA), said since the issue of crossbows first appeared on the agenda last fall he has received approximately 100 phone calls on this topic. A lot of the concerns were covered today by Tom Thornton: the effectiveness, increase and opportunity decreases, physicians untightening the regulation or allowing more to use crossbows. Elkins said their state board members also received phone calls from members and nonmembers. At a recent OHA Board meeting they adopted this position statement: "<i>OHA opposes the use of crossbows for hunting in Oregon.</i>" Elkins said the common thread in all those he talked to regarding crossbows in Oregon was the assumption that crossbows would be used during rifle season and not bow season. He noted that he did not ask the question what would you prefer. It was just automatically assumed by the person he spoke with that it would be rifle season and not bow season.</p>

1 Commissioner Akenson said of the feedback you got did any people want to use a
2 crossbow in a rifle season? Elkins said no, they were all opposed to it.

3
4 Commissioner Anderson asked what the philosophical rift is of using that particular
5 equipment in rifle season. Elkins said he really didn't know. Their assumption was it
6 would be used during rifle season and not during bow season; they never said to me
7 why. Commissioner Anderson said purists just doing rifles during rifle seasons? Elkins
8 said the more he talked to people the more he realized that was a common assumption;
9 it's not a bow it is something else and more like and as a powerful as a rifle.

10
11 Acting Chair Finley said he had thought they needed to have a discussion as to why
12 there was a bow season. What was the purpose that it was originally designated? After
13 reading he found that it was to give an advantage to the animal; that these were primitive
14 weapons therefore you were allowed earlier access in the season. Unlike a rifle you were
15 giving a sporting chance and better odds for the prey. He said when he fired a crossbow
16 it's like a rifle and doesn't provide any advantage to the animal. It's not a primitive
17 weapon by any means.

18
19 Commissioner Anderson said she shot a crossbow as well. A lot of her staff and
20 customers hunt and said they would love to use a crossbow. The hunters she spoke with
21 especially the young hunters thought it would be cool to use crossbows in rifle seasons.

22

<p>Nick Droback Eugene, Oregon</p>	<p>Nick Droback, BowTech Archery, said under the brand is a product called Stryker Crossbows. They manufacture recurve bows for youth, compound bows for youth and adults as well as crossbows. He is a hunter but does not use a crossbow and will not unless he is disabled, so this is not a personal issue but as it relates to disabled hunters. He spoke to:</p> <ul style="list-style-type: none">• Crossbows are different, how and why.• Misconception that a crossbow has a mechanical advantage over a mechanical compound bow in its speed, efficiency, and distance. The average compound bow is shooting 330 to 350 feet per second on a high end conventional compound bow. Their crossbows have a rating of 350 to 380 feet per second.• Can be misleading in thinking that a crossbow has an advantage in the numbers of bolts you can fire in succession opposed to a compound bow. He said it is easier to shoot and repeat shots on a compound bow. There are mechanical aids needed to cock a crossbow, safeties to be engaged and disengaged in order to shoot them, and acquiring a target through a scope in a lot of situations. The actual time to load a projectile and fire it from a compound bow is quicker than a crossbow. <p>Droback said he believes and it is his opinion and the</p>
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	<p>opinion of BowTech Archery that crossbows do have a place for the disabled hunter. He said in terms of opening it to folks during rifle season who are perfectly able to shoot a conventional compound bow that is not a topic that they have an opinion formed on yet. Just simply disabled folks who have hunted or desire to hunt archery season.</p> <p>Director Elicker asked Droback to pass on their thanks for allowing the Commission, staff, and the public last fall to visit their facilities and handle these weapons. Droback said there is an open invitation from BowTech Archery invitation to ODFW and the public to experience all these bows.</p>
<p>Kevin Thompson Salem, Oregon</p>	<p>Kevin Thompson, Vice President for Traditional Archers of Oregon (TAO), distributed written testimony from President Rich Thompson and spoke to Rich's testimony (see Crossbows in Oregon III January, 2014). Highlights:</p> <ul style="list-style-type: none"> • The Commission has heard repeatedly individuals and representatives of Oregon's archery community unite to speak again allowing crossbows in Oregon's archery seasons. OHA recently reiterated that crossbows should not be allowed for hunting in Oregon. • At their October meeting, the Commission received virtually no compelling reasons to justify crossbows from the disabled community; the only disabled person writing in favor of crossbows in archery season is missing part of a thumb and an index finger. Has he ever heard of a "release" used by 99% of today's modern archers? How would he react to seeing Rick Gabbard shoot without benefit of one arm using the Draw-Lock? • A report prepared by archery engineering expert Roy S. Marlow made the following key points: <ul style="list-style-type: none"> ➤ Crossbow designs will improve significantly as advanced materials are used, legal restrictions on performance are eased and market conditions grow to cover development costs. ➤ With these improvements, crossbows could hit a deer's kill zone at ranges of zero to 82 yards without ranging the target. ➤ This equates to having 1.8 times the maximum range allowing capability to cover 3.3 times the area of a typical vertical bow shooter. Kevin said these are coming true: the accuracy and the distance taken with crossbows are very much different than what the traditional bow was at the time. <p>Kevin said the report closed with a comment by an archery</p>

	<p>company engineer in 1988: “I don’t believe the industry is anywhere near the leading edge of technology on this speed thing. What is holding us back is an adequate crossbow market to justify the development costs.” The Commission’s decision on crossbows will impact the resource itself as well as the quality of all hunting in Oregon. Kevin said we urge you to join TAO, OBH, and OHA and vote <u>no crossbows</u> for hunting in Oregon.</p> <p>Kevin said in contrast to “Title II Disabled Archer Crossbow Use Justification” state objections to crossbow use are never backed up with facts. He spoke to the statement:</p> <ul style="list-style-type: none"> • Crossbows will decimate our deer herds. He said crossbows will increase the effectiveness in harvesting animals. As stated in previous Department documentation, this will lead to reduced hunt opportunities for game units that are under MO’s or benchmarks. He said usage of crossbows is in direct conflict with ODFW’s black-tailed deer management concepts. As hunter effectiveness increases ODFW must consider restricting technology or reducing opportunities (tag numbers or season length) to maintain population and benchmark buck ratios. <p>He said the Oregon archery season has already seen reduced opportunities in various hunting areas. TAO is opposed to the use of crossbows in Oregon’s archery season. TAO’s position is no electronics on archery tackle.</p>
<p>Craig Starr Lebanon, Oregon</p>	<p>Craig Starr, Oregon Bowhunters Association (OBH), distributed written testimony and said OBH is absolutely opposed to opening archery season to crossbows, as are the vast majority of other Oregon bowhunters. He said:</p> <ul style="list-style-type: none"> • Allowing disabled hunters to use crossbows in archery season will only be the beginning of an on-going incremental effort to open archery season to use of crossbows by everyone who wants to use one. • Are we really to expect that BowTech will be satisfied with their market share of 10 to 20 crossbows in Oregon? Starr doesn’t believe that is going to be the case. • If American with Disabilities Act (ADA) requirements is really the issue, the question to address is how the ADA requirements could be satisfied without opening archery season to use of crossbows. • The focus has been on imposing crossbow use by disabled hunters into archery season to the exclusion of considering other alternatives. Severely disabled

	<p>bowhunters have physical limitations that warrant special consideration. OBH supports a reasonable accommodation for their limitations.</p> <p>OBH does not believe that imposing use of crossbows into archery season is a reasonable accommodation for those limitations any more than allowing firearms to be used in archery season would be. Starr said if you decide to provide staff direction to develop crossbow hunting rules as the staff report suggests you might, we urge that direction to include exploration of alternatives that keep crossbows out of archery season.</p>
<p>Tom Vanasche, M.D. Albany, Oregon</p>	<p>Dr. Tom Vanasche, the Pacific West Regional Representative for the Professional Bowhunter’s Society (PBS), represents 1,400 archers. He is a lifetime member of TAO, and an associate of OHA. He distributed written testimony. Highlights include:</p> <ul style="list-style-type: none"> • Three of these organizations are adamantly opposed to allowing crossbows in archery seasons. • As a physician he deals with disability patients every day. Allowing crossbows into archery season will open up Pandora’s Box. The current government disability program is rife with fraud and abuse. He reviewed the Oregon regulations on “disability”. As written, the potential for unscrupulous and or unknowledgeable practitioners and patients to combine to obtain a permit is high. The average physician knows almost nothing about archery hunting and may wish to give his patient a better chance in the field. He is skeptical of finding a physician with knowledge of both bowhunting and disability requirements under the current regulations. • Ron Anglin is proposing to limit the disability requirement to section “D” in the regulations. You must have a “permanent, physical impairment that prevents the person from holding or shooting a firearm or bow or from holding a fishing rod.” The practitioner must decide the patient cannot use “adaptive archery equipment”. He is skeptical the average physician will have the knowledge base to make those decisions. Who is going to oversee this program and at what cost? • Currently 6,329 persons receive disability permits and 14% (or 900) could qualify for this exception. WDFW hands out 75,000 disability permits and over 4,000 crossbow permits. The program has rapidly escalated. He sees endless expansion of this should it be adapted. • Other disability categories may sue or contact their

	<p>legislators because they have been discriminated against.</p> <ul style="list-style-type: none"> • Currently only about 20 archery special use permits are issued. Dr. Vanasche believes the number under this proposal will skyrocket with potential for fraud and abuse. • Other categories of disability may bring up their demands. <p>Dr. Vanasche believes game harvest would significantly expand if 900 permits were issued with more to follow, and would be a phenomenal tool for poachers.</p>
<p>Kevin Mason Portland, Oregon</p>	<p>Kevin Mason, a hunter, said he has a Draw-Lock and last year was the first time he got to go hunting and felt confident by using this Draw-Lock. His son can shoot 82 yards and hit a paper plate with his compound bow. He asked how he was ever going to get a sheep if he draws a tag; he is only confident at about 30 to 35 yards. He said I just want to be able to go hunting and have an option. He spoke of his disability; he has four inch screws, and said it is hard for him to even pull a bow back without the Draw-Lock. He has to sit in camp while his kids go hunting and he can't enjoy hunting with them.</p>

1
2 Acting Chair Finley said Director Elicker has asked for direction from the Commission.
3
4 Commissioner Akenson said when is the most recent archery review going to be
5 completed? Thornton said one is starting in a couple of weeks and should be completed
6 by April. We will brief the Commission in June and then October for final adoption.
7 Commissioner Akenson said we have heard so much negative from the hunting
8 community against the crossbows in Oregon's archery season. She would like to see this
9 wait until the Commission can see what that ARC review recommendation is and to
10 perhaps have a disabled bowhunter participate in that review.
11
12 Director Elicker asked Anglin to address Commissioner Akenson's request.
13
14 Anglin said we could have ARC look at that but he was unaware anybody on ARC would
15 qualify as a disabled bowhunter. You heard from the bowhunting community how they
16 feel about crossbows in general and he would be surprised if you heard any different
17 come out of ARC than what you have already heard. If you want that kind of analysis or
18 discussion staff would need to look to a combination of our hunting community, rifle and
19 bowhunters, and make sure disabled hunters are included in that conversation. The ARC
20 is not set currently up to do that.
21
22 Commissioner Wolley referred to the proposed motion and said he would support
23 directing the staff to proceed with a proposal with one addition and one caveat. As the
24 motion reads now it does not specify people with disabilities, "...direct staff to [proceed,

1 or, not proceed] with development of a proposal to allow crossbows to be used for
2 hunting game animals.” In an effort to comply with ADA requirements he suggested it
3 read, “*Direct staff to proceed to proceed with the development of a proposal to allow*
4 *crossbows by people with disabilities to be used for hunting game animals.*” He asked
5 that within that proposal: the Commission be provided with alternatives to consider in
6 terms of seasons and be developed with consideration of people with disabilities using a
7 crossbow during archery season and rifle season and even both seasons, as opposed
8 to presenting the Commission with an either or, or one way to look at the proposal.

9
10 Commissioner Anderson disagreed. She said if we are going to open up “Pandora’s
11 Box”, we should look at the whole of it. Some states allow crossbows for nondisabled
12 people during rifle season and that should continue to be on the table for consideration
13 and for Oregon. She would not want to limit it to looking at accommodating disabled
14 individuals only at this point.

15
16 Commissioner Akenson said talking about crossbows is not talking about disabled
17 hunters and disabled hunting programs. Rather than focus on the topic of crossbows
18 and archery, we should focus on what we are doing for disabled hunters and fishermen
19 and what other ways can we enhance that. Do we want to have a hunt that is just for
20 disabled hunters? ODFW is committed to provide for disabled fishers and hunters. We
21 should put that in a brochure and on the website and be thinking about what more we
22 can do for them and not focus on one single technique that may or may not be wanted in
23 Oregon. As an agency if we are targeted for a lawsuit we have a case of a true intent to
24 do what we can to optimize opportunities for disabled hunters and fishers without
25 sacrificing the concerns that people have about specific weapons or tools.

26
27 Commissioner Webber is a bowhunter in Oregon. In the demonstration at BowTech he
28 fired a crossbow. He said it is a fundamental change and it does not fairly compete with
29 a compound, long bow or a recurve. Ballistically you can make argument that they are
30 similar but the operation gives the person with the crossbow a huge advantage. He does
31 not see that in the archery season but if they had to go somewhere he could see them in
32 rifle season. He said we have already indicated to allow disabled hunters to use adaptive
33 equipment and we issue permits for Draw-Locks. He doesn’t know that he would tell staff
34 to go spend more time on this. He is not in favor of crossbows in archery season.

35
36 Vice Chair Finley referred to Commissioner’s Akenson’s overview and said how do we
37 provide opportunity to the disabled and how much staff time will that take?

38
39 Director Elicker said since 2010, the Wildlife Division has spent hundreds of hours of
40 staff time on this crossbow issue. You heard Mr. Perez say that on three different
41 occasions in the recent past we have received national awards in this agency on hunter
42 accessibility for hunting and fishing, so no one out there has a sense that we are not
43 dedicated to providing access for disabled folks. Since he was not hearing clear
44 consensual direction from the Commission as to what they would like staff to do with
45 crossbows, he recommended that the crossbow issue be dropped. He said we have
46 already a good program to allow accessibility for archery; it is limited to Draw-Locks and
47 that is certainly what the archers of Oregon, the ones without disabilities, would prefer.

1
2 Director Elicker recommended that staff move on with ARC with the other issues on the
3 table. He said crossbows will not go away and will be back before the Commission
4 probably in a few years as more folks ask to use them and the legislature asks why we
5 don't allow them. He reminded the Commission that legislation was going to be
6 introduced during the 2013 Session to legalize crossbows in Oregon but staff took this
7 issue up with the Commission for them to deal with instead.

8
9 Acting Chair Finley said this rapid expansion we have seen across the United States is
10 because of lobbying by the industry. We can expect it to come back. He asked the
11 Commission if they were comfortable with tabling this issue for a while. He didn't hear
12 consensus among the Commission right now but maybe over time the Commission could
13 find a need to address this.

14
15 Commissioner Webber said he would be comfortable with that. He would welcome any
16 suggestions of additional equipment; the Commission needs to be open to looking at
17 alternative adaptive gear.

18
19 **EXHIBIT C: WARMSPRINGS DAM HYDROELECTRIC PROJECT FISH SCREENING**
20 **EXEMPTION AND FISH PASSAGE WAIVER.**

21
22 Acting Chair Finley said there was an amendment to clarify for Exhibit C. Commissioner
23 Webber said for the record, when the Commission discussed the Warm Springs Dam
24 Hydroelectric Project fish screening and fish passage, his motion simply said to table it.

25
26 *Action: Commissioner Webber amended his motion to specify that the*
27 *Commission would be tabling the Fish Screening Exemption and the Fish*
28 *Passage Waiver in regard to the Warm Springs Project.*

29
30 Acting Chair Finley said for purposes of clarification you are emphasizing both the fish
31 screening exemption and the fish passage waiver.

32
33 *Commissioner Anderson seconded the motion. The motion passed unanimously*
34 *by a vote of five.*

35
36 **ADJOURN**

37 Acting Chair Finley adjourned the meeting at 5:30 p.m.