



Oregon Fish and Wildlife Commission Minutes

Teleconference Meeting:

August 14, 2012 – 2:00 p.m.
Oregon Department of Fish and Wildlife
Commission Room
3406 Cherry Avenue
Salem, Oregon 97303

1
2 *Commission minutes are considered draft until approved by the*
3 *Commission at its next meeting.*
4

5 Notice of these meetings had been made by press release of statewide media
6 circulation. Those attending part or all of the teleconference meeting included:
7

Bobby Levy, Chair
Bob Webber, Commissioner
Holly Akenson, Commissioner
Laura Anderson, Commissioner
Gregory J. Wolley, Commissioner

Roy Elicker, Director
Curt Melcher, Deputy Director
Steve Sanders, Assistant Attorney General
Teri Kucera, Executive Assistant

8 MEETING

9 On Tuesday, August 14, 2012 at 2:05 pm, Chair Bobby Levy called the Oregon Fish and
10 Wildlife Commission (the Commission) teleconference meeting to order. She said that
11 Commissioners Webber, Akenson, Anderson and Wolley were on the teleconference.
12 Both Commissioners Michael Finley and Krystyna Wolniakowski were excused.
13

14 Exhibit A: LOWER COLUMBIA RIVER FISHERIES MANAGEMENT

15 Director Roy Elicker referred to Governor John A. Kitzhaber's (the Governor) letter dated
16 August 9, 2012 to Chair Bobby Levy and himself. He said Brett Brownscombe, Natural
17 Resource Policy Advisor to the Governor, will talk about the Governor's letter with regard
18 to the Commission undertaking rulemaking on lower Columbia River fishing.
19

20 Curt Melcher, Deputy Director for Fish and Wildlife, said prior to 2001 the Oregon
21 Department of Fish and Wildlife (the Department) and the Commission had no formal
22 allocation on the lower Columbia River regarding how we shared federal Endangered
23 Species Act (ESA) impacts or harvestable surplus. The allocation decisions were made
24 annually by Columbia River Compact. In the 1990's thirteen stocks of salmon and
25 steelhead were listed in the Columbia River and the focus moved to allocation of ESA
26 impacts for fishery objectives. In 2001 the Commission and Washington Fish and
27 Wildlife Commission (WFWC) issued a formal allocation between recreational and
28 commercial fisheries in the mainstem Columbia River. Each year the Commission public
29 process was extremely contentious. Both Commissions directed staff to begin a
30 professionally facilitated stakeholder process; but it was terminated in June 2008 after
31 some stakeholders felt that they could not participate in the process.
32

33 Deputy Director Melcher said both Commissions formed a workgroup of Oregon and
34 Washington commissioners to work on solutions and who recommended a five-year
35 agreement that was adopted at a joint Oregon and Washington Commission meeting in
36 December 2008. He discussed key directions to staff:

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- Hold 30% to 40% of the fish in a pre-season buffer until run-size known.
- Move production from tributaries or increase production into Select Areas.
- As Select Areas fisheries were further enhanced in 2013 and beyond, shift allocation of mainstem fishery benefits away from commercial fishery to recreational fishery to offset the quid-pro-quo between enhanced Select Areas and potential benefits to the recreational fishery.
- Develop a sharing matrix approach based on run-size on how fisheries would share ESA impacts between the two primary constituent groups. A key issue was the sharing point and where to base the other allocations within the matrix. The Oregon Commission changed the base allocation matrix which ODFW is still using and holding those impacts in arrears until the run-size is known. Staff has not finished moving production and improving the Select Area fisheries.

Brett Brownscombe, Natural Resource Policy Advisor to Governor Kitzhaber, clarified for the record that he was communicating the Governor's own position here for legal reasons. He said it was not his position as a public official or that of the Governor's Office. He discussed key elements in Governor John Kitzhaber's letter dated August 9, 2012 asking the Commission to convene and undertake rulemaking on lower Columbia River fisheries management.

- Governor feels strongly that the Commission is the proper venue for this conversation and decisions on this matter.
- Non-tribal gill nets should be phased out of the mainstem lower Columbia River through a transition to off-channel enhanced fisheries as well as more mainstem methods.
- Governor intends to oppose Ballot Measure 81 (BM #18) in favor of the Commission's approach and rulemaking process.
- Governor expects the commercial and recreational fishing industries to work in good faith; they have their interests to represent in working with the Commission.

Brownscombe discussed his written testimony dated August 14, 2012 and said the Governor believes a resolution needs to enhance the economic vitality of commercial and recreational fisheries vital to Oregon's economy, communities and culture. The Commission and Department should work with counterparts in Washington State as soon as possible. He said there is no shortage of history and conflict between methods of fishing on the Columbia for salmon and other species. Based on this history and recent history, the Governor feels that there is no need to rework old ground from scratch; there is a lot to build on and that resolution can be reached by the end of 2012.

Brownscombe continued to highlight key elements in the Governor's letter:

- Using a phased-in approach to moving gill nets out of the mainstem lower Columbia River is essential to the economy.
- Transition should reflect a modest shift in priority towards recreational fisheries in the mainstem to avoid significant and immediate economic harm to commercial fisheries that precedes the return of additional fish to the enhanced off-channel areas and development of selective gears for future mainstem commercial fishing.

- Transition should ensure the political and resource commitments that are needed transpire. May include authorization of alternative gear by the legislature, secured commitments from federal agencies related to enhancement of Select Areas in the off-channels, and engagement by the recreational fishing community on funding solutions that share the transitional burdens.
- Commitments dependent on the Commission decision and working with Washington on the size and nature of enhancements to off-channel fisheries; both in terms of hatchery fish production, location and boundaries.
- Governor is not proposing a ban on commercial fishing in the mainstem.
- Governor has asked the Commission to consider ways to address commercial mainstem opportunities with more selective gear - types, timing and places of such gear - and during deliberations working with Washington and stakeholders.
- Mainstem commercial fisheries can provide important additional economic benefit when recreational fisheries are meeting their objectives and harvestable surpluses are available. They can provide conservation benefits by “mopping up” surplus hatchery fish late in the run when recreational fisheries are not as effective.
- A shift in hatchery production required to adequately enhance off-channel areas should come, where possible, from basins where reduced hatchery releases would complement and best enhance wild fish recovery.

Brownscombe referred to his written testimony and summarized the Governor’s interim components for a transitional and long-term approach.

- When the investments and enhancements of off-channel fisheries for the commercial industry cannot hold in a way that produces economic returns from: 1) hatchery fish moved down to those areas which could involve enhanced boundaries in locations; or 2) for those hatchery fish raised and released to the ocean and then return from the ocean with economic returns to the commercial fishery that transition period is going to take a number of years.
- Make minor shift immediately in prioritizing recreational opportunities on the mainstem while initiating increased enhancements to the off-channel areas.
- Long-term transition is part of the non-tribal gill nets to off-channel areas out of the mainstem area entirely while prioritizing off-channel areas to the commercial fishery and the mainstem for recreational fishing interests.
- Interim phase would involve a fixed allocation between commercial and recreational fisheries (see details in letter).
- Secure off-channel fisheries with available ESA impacts. Not anticipated that off-channel fisheries would involve no impact at all on allowable ESA harvest impacts. Brownscombe said while there would be an allocation to the commercial fishery to allow harvest in the Select Areas and off-channel areas, if those Select Areas have not consumed the entire allocation of impacts or if there are excess hatchery fish that the recreational fishery has not addressed, there would be opportunities so long as there is consistency with the prioritization in the mainstem for recreational fishing. There would continue to be opportunities in the mainstem for commercial fishing with selective gear.

1 Commissioner Bob Webber said what is “off-channel”? Deputy Director Melcher said
2 Youngs Bay, Tongue Point and Blind Slough; Washington State has Deep River. These
3 areas off the mainstem need to be suitable to acclimate and release hatchery production
4 so they return to that area. Off-channel areas have a lower chance of intercepting non-
5 local stocks and provide the appropriate ability to acclimate hatchery fish.

6
7 Commissioner Webber asked what the timeframe for a phased-in, long-term and short-
8 term approach is. Brownscombe said if the interim approach is undertaken immediately
9 and depending on rulemaking it could be 2013 through 2016.

10
11 Commissioner Holly Akenson asked about funding resources available to implement the
12 results of this rulemaking. Brownscombe said existing select fishing areas need to be
13 secure. Currently they are funded through a mix of funds including Bonneville Power
14 Administration (BPA) mitigation dollars. Enhancements in addition to shifting some level
15 of hatchery production down to the mouth and off-channel areas need infrastructure in
16 the form of net pens and other infrastructure. He said the Governor is committed to
17 ensuring that funding is in place but there are other players – federal agencies, the state,
18 and the fishing communities – who need to discuss where the money comes from.

19
20 Commissioner Akenson asked how the allocations established for Select Areas will differ
21 from the current situation. Will they be the same proportional allocations or the same
22 amount of acceptable mortality? Have those numbers been defined? Brownscombe said
23 the overall limits on mortality are set by the National Oceanic and Atmospheric
24 Administration related to ESA harvest impacts. The allocations are specified as to each
25 run for relevant fisheries. The Governor feels there is opportunity to enhance
26 conservation benefits on sturgeon populations.

27
28 Ed Bowles, Fish Division Administrator, said part of Commissioner Akenson’s question
29 was will commercial be given enough impacts to ensure they can take advantage of all
30 the fish in off-channel areas. Bowles said yes that is the intent. A first priority is to make
31 sure those off-channel areas have adequate impacts up to 20% long-term in order to
32 fully get at those fisheries. For instance, for the spring fishery the off-channel areas
33 currently use about 10% of those impacts. This would double that but assumes they will
34 be enhanced in area and location and will probably be used.

35
36 Commissioner Akenson asked if there would be any change in that the limits are set by
37 NOAA and the states would not try to decrease mortality on ESA-listed fish. Bowles said
38 what the Commission will be doing relative to the allocation will not impact any of the
39 ESA constraints regarding impacts available to ESA-listed wild fish. He said you hinted
40 at whether there would be more wild fish moving to the spawning ground; that is difficult
41 to say with respect to all species. Those impacts will still be used up and this won’t
42 change that too much. Some of this may help remove additional hatchery fish destined
43 for spawning grounds; a direct conservation benefit on sturgeon.

44
45 Commissioner Anderson asked how the numbers were derived for allocation shifts
46 during the transition period. Brownscombe said from looking at the current status quo in
47 allocations and making shifts in those numbers to reflect the overall intention around: 1)

1 securing enough ESA impacts needed to secure the off-channel areas and continue to
2 allow mainstem commercial fishing with selective gear, and 2) meet the objective of
3 enhanced recreational benefits in the mainstem. In addition to the enhanced facility on
4 mixed stock fisheries and species in the mainstem that are a mix of wild and hatchery,
5 upriver and lower river, and the conservation related to sturgeon and hatchery shifts.

6
7 Commissioner Anderson asked if Brownscombe or the Governor had looked closely at
8 the mortality of the status quo of using tangle nets versus recreational fishing. If yes
9 what were those findings? Brownscombe said we did look at that and do regard the
10 tangle net as an option that reduces mortality on upriver moving fish in way that gill nets
11 don't. If used properly tangle net fisheries offer under a 14% mortality rate with the use
12 of live boxes compared to a 10% mortality rate with hook and line recreational fishing. He
13 said the Commission should put that on the table for discussion.

14
15 Commissioner Wolley said the Governor asks the Commission to look at new locations
16 for off-channel enhancement. Is there consideration if the new locations and the
17 physical sites are in need of improvement to enhance the fishery, e.g., increasing hiding
18 cover for juvenile fish or small woody debris? Are those types of physical site
19 improvements needed? Brownscombe said this is not a habitat restoration solution for
20 rearing juvenile hatchery fish in a native setting. The Governor's letter talks about finding
21 new locations to rear hatchery fish in a hatchery setting for acclimation and release into
22 the ocean. He said there is a huge amount of value in habitat restoration approaches to
23 recovering existing ESA-listed stocks or runs of salmon but it is just not directly part of
24 this proposal.

25
26 Chair Levy asked for specifics on acceptable mortality rates. Brownscombe didn't have
27 the specific number on what kind of mortality rates the Governor is looking for each of
28 the relevant runs. He said if we improve selectivity and reduce mortality through more
29 selective gear in the mainstem where the stocks are more mixed there is a benefit to
30 bringing that mortality rate down. Mortality rates could be a question the Commission
31 undertakes assuming the Commission takes up rulemaking.

32
33 Chair Levy asked wouldn't we have the same number of mortalities on the ESA-listed
34 fish no matter where we move the Commercial fishermen. Bowles said the dilemma is in
35 the mainstem under a mixed stock fishery. You have primarily ESA-listed upriver
36 destined fish with constraints. In the off-channel areas there are occasions when the
37 upriver ESA fish venture in and those impacts related to those still allow the gillnetters in
38 the off-channel areas full access to those fisheries. He said moving fish to the off-
39 channel should reduce the potential for encountering or catching wild listed upriver fish
40 dramatically. You can catch a lot more fish for market without encountering a wild listed
41 fish in off-channel areas than if you were fishing in the mainstem.

42
43 Commissioner Webber referred to BM #18 and asked if the proposed shift to emphasize
44 recreational in the mainstem and commercial in the off-channel areas is a direction that
45 the Governor wanted to go regardless of whether you could use the gill nets or not.
46 Brownscombe said the Governor did intend to address this issue but his timeframe was
47 affected by BM #18. The Governor does not support the broader consequences imposed

1 if BM #18 passes and feels his solution would result in the broadest benefit for the
2 broadest sector of Oregonians and the state's economy.

3
4 Chair Levy referred to Brownscombe's August 14 letter and said won't the allocation
5 numbers shifting from 60-40 to 70-30 add additional economic hardship? How do we
6 prevent that until we get everything moved to where the commercial fishermen can have
7 more viable fishing in the off-channels? Brownscombe said there is an initial modest
8 shift in the interim period towards prioritizing recreational opportunities in the mainstem
9 based on economic benefit. The Governor feels there will still be opportunities related to
10 the use of gill nets and ways that the Commission can prevent any immediate economic
11 impact on the commercial end. That is something for this rulemaking process and the
12 Commissions and Departments to work out.

13
14 Commissioner Webber said in terms of our ability to enhance off-channel fisheries what
15 is our capability of doing that? Is there sufficient habitat in those areas to support larger
16 numbers of juvenile fish? Deputy Director Melcher said provided that we can find the
17 production and some capital investments in those areas we do believe we can provide
18 additional production in those areas. He said we may want to look at expanding those
19 areas or look at new areas.

20
21 Commissioner Webber said if we were successful in producing more fish in the off-
22 channels areas how does the Tribal rights relate to those off-channel fish. Are their
23 numbers included in the share allocation? Deputy Director Melcher said all the stocks
24 destined for areas downstream from Bonneville Dam do not factor into the equation in
25 sharing with the Columbia River Treaty Tribes. The current U.S. versus Oregon
26 Agreement spells out how we share fish with the Treaty Tribes but only for stocks
27 destined for above Bonneville Dam. Any production shifts we take in terms of lower
28 Columbia River stocks either into or out of Select Areas has no bearing on our sharing
29 formula with the Tribes.

30
31 Commissioner Wolley asked if the 30-40% conservation fish buffer would be on the table
32 again. Deputy Director Melcher said those buffers are still in place. We would advocate
33 retaining those buffers because of the volatility and uncertainty in our ability to predict
34 these run-sizes pre-season. Most of the non-tribal fisheries occur prior to the fish passing
35 Bonneville Dam when we know with any real precision what the actual run-size is.

36
37 Chair Levy asked where does the fish or enhancements come from? What rivers or
38 tributaries would we be moving or not restocking or adding hatchery fish to in order to
39 make it work in the Select Areas. Deputy Director Melcher said there are a number of
40 things to do:

- 41 1. Identify how many fish are needed in Select Areas to replace lost mainstem
42 opportunity
- 43 2. How many can we accommodate with existing or enhanced infrastructure.
- 44 3. Identify where we have production we could possibly shift. Look at the full suite of
45 Oregon production; discuss with the State of Washington.

- 1 4. If we can't shift enough production look at ways to additionally enhance
2 production; are there facilities where additional fish can be raised to meet the
3 Commission's objective.
4

5 Bowles added that staff would consider those areas where there may be conservation
6 concerns with the existing level of hatchery production and opportunity through the shift
7 to compliment other conservation needs for those basins.
8

9 Director Roy Elicker said when he knew the Governor's letter was coming he spoke with
10 WDFW Director Phil Anderson and their chair Miranda Wecker about how the two states
11 can move ahead. Both states came very close in 2008 working with commercial and
12 recreational stakeholders on a joint solution. He said we are not starting from scratch
13 and Washington wants to come together on consensus.
14

15 Director Elicker recommended that the Commission direct him to move ahead per the
16 Governor's letter. He will schedule a meeting with Director Anderson and staff in the next
17 week and bring Chair Levy into the discussion. He asked Chair Levy to appoint a
18 subcommittee of Oregon Commissioners to work with him and staff in building a solution.
19 Stakeholders will be involved. Although this is an ambitious schedule to complete this by
20 the end of 2012 it is not un-doable. He will reassign staff and resources to achieve the
21 Governor's direction and in a timely way.
22

23 Chair Levy asked the Commission if they were ready and willing to move this forward
24 and ask the Department to initiate rulemaking on the Governor's request from his letter
25 dated August 9, 2012. The Commission agreed.
26

27 Chair Levy asked if the Commission needed to vote as a Commission or does she just
28 direct the Department to move ahead. Legal Counsel Steve Sanders said no formal
29 action is required. The Department and the Governor's Office have received the
30 message here and we can set forward and start the rulemaking process with the advice
31 that the Commission has given now.
32

33 Chair Levy said the Commission members as a whole are directing the Department to
34 initiate rulemaking and make sure that it reflects the Governor's August 9, 2012 letter
35 that he gave to us utilizing the underlying details he provided by his staff today. She said
36 the rulemaking process, she wants to make sure that all know, should include closely
37 working with the Washington Department of Fish and Wildlife partners and all the
38 stakeholders and the public interests that have to do with this. Chair Levy said she
39 wanted to make sure that the Commission receives these draft rules for our
40 consideration before the end of 2012.
41

42 Director Elicker said he understood the direction from the Governor and the direction
43 from the Commission; staff will get started on this right away.
44

45 **ADJOURN**

46 Chair Levy adjourned the meeting at 3:30 p.m.