

Agenda Item Summary

BACKGROUND

The Oregon Fish and Wildlife Commission (Commission) is nearing the end of its rulemaking process to consider changes to administrative rules governing the private holding of cervids generally and Type 1 cervid licenses in particular. That process focuses on a package of proposed rule changes. Those changes would affect the Commission's Division 049 rules concerning the private holding of cervids, plus make related housekeeping changes to rules in Divisions 045 (Definitions) and 200 (Sale, Purchase or Exchange of Wildlife Parts).

In early 2007, the Commission formed the Cervid Rule Advisory Group (CRAG) to recommend to the Department of Fish and Wildlife (department) ways to improve Oregon Administrative Rules for Type 1 Cervid Propagation Licenses. Type 1 rules govern the private possession and propagation of live cervids, other than fallow deer and reindeer, in Oregon.

The CRAG was composed of a diverse group of constituents interested in Oregon elk ranching. It developed over 100 recommendations to improve Type 1 rules in the course of five meetings. While there was general agreement that the existing rules could be improved, there was little consensus on specific changes.

Based on the CRAG's work, department staff prepared preliminary rule concepts (Preliminary Concept) to focus Commission and public discussion on the types of proposed rule changes that might be formally run through a public rulemaking process.

The Preliminary Concept was released for public review after it was presented to the Commission in December 2007. Through mid-February more than 200 comment letters and emails were received.

Staffs used public comments on the Preliminary Concept and continue staff analysis to develop a formal package of proposed Division 049 rule revisions.

Also, a statute specifically authorizing the sale of domestic elk meat expired January 2, 2008. The Commission has independent statutory authority to authorize the sale of wildlife parts. The Commission adopted a temporary rule in late December 2007 authorizing continued sale of domestic elk meat using this authority. It expires May 29, 2008. Staff proposes to make this change permanent.

PUBLIC INVOLVEMENT

Advisory Group: Representatives from agricultural, elk ranching, environmental, and hunting interests as well as a non-ODFW scientist and representative of Oregon Department of Agriculture, agreed to participate in the CRAG. They met five times between April 18 and August 14, 2007, to recommend ways to improve rules for Type 1 Cervid Propagation Licenses.

Preliminary Concept: The Preliminary Concept was based on recommendations provided by the CRAG. Public testimony was received on the Preliminary Concept at the December 2007 Commission meeting. After this meeting it was posted on the department’s website and sent to a broad distribution including all holders of licenses to possess and propagate cervids in Oregon, hunting groups, and environmental groups for comment.

Over 200 letters and emails of comment were received. While most were from Oregon residents, comments were also received from interests in Colorado, Minnesota, Missouri, Montana, New York, North Dakota, and Wisconsin.

Formal Rulemaking:

1. Notice and comment phase: After taking public comment on the Preliminary Concept, staff has prepared a formal rule amendment package for rulemaking. The public comment period on this package runs to the Commission discussion at its meeting on April 18. This agenda Exhibit includes copies of all comments received as of April 3. By the April 18 Commission meeting, staff will also provide Commissioners with comments received between April 3 and the meeting. During the April meeting, the Commission will take public testimony on the rule package.
2. Rule adoption phase: Staff proposes that the Commission adopt the amendment to OAR 635-200-0090 (sale of elk meat) and amendments to OAR 635 Division 049 (cervid rules) and Division 45 (definitions).

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| ISSUE 1 | To adopt, as a permanent rule, the proposed amendment to OAR 635-200-0090. |
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| ANALYSIS | Staff proposes to clarify and make permanent the rule that has for several years allowed the sale of meat from domesticated elk, under certain conditions. The amendment would delete a reference to a statute that has sunset in January 2008. |
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| OPTIONS | <ol style="list-style-type: none"> 1. Adopt the amendment as proposed by staff. This would continue to allow the sale of meat from domesticated elk under certain conditions. 2. Amend the rule in some other way. 3. Repeal the rule. |
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| STAFF RECOMMENDATION | Option 1 |
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| ISSUE 2 | Whether to adopt amendments to Divisions 045 and 049 as proposed by staff. |
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| ANALYSIS | Staff has proposed a rule package that consists of a comprehensive revision of Division 049 and related housekeeping changes to Division |
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045. In reviewing past Commission direction and the public comments received to date, staff has identified the following primary policy issues the Commission may wish to address in considering the staff's proposed revision:

- How should the Commission express its policy toward private holding and propagation of cervids?
- Should a license be revoked if a licensee does not continuously hold cervids?
- Should the Starkey Experimental Forest and Range be exempted from Division 049?
- Should import of gametes, embryos and/or live cervids be allowed?
- Should export of "shooter bulls" be allowed?
- Should licensees or their clients be allowed to hunt captive cervids?
- Who should bear the cost of recovering escaped or released captive cervids and repairing/rehabilitating associated habitat damage?
- What testing and reporting should be required upon death of a captive cervid?
- Should the department regulate the disposal of captive cervid carcasses?
- Should licensees be required to comply with specific genetic standards?
- What should the term of a license be?
- Who can a license be issued to?
- Should Division 049 limit the herd density allowed under an individual license?
- Should there be any restrictions on the sale of captive elk meat and byproducts?
- How many Type 1 licenses should there be?
- Should licensees be required to provide evidence of security to indemnify the state for its expenses if the state is forced to act to remedy a facility-specific problem?
- How should available Type 1 commercial and exhibition licenses be awarded to new licensees?
- Should double perimeter fencing be required for Type 1 facilities?
- What marking should be required for Type 1 cervids?
- Should a permit be required to transport Type 1 cervids?
- Should private trade in Type 1 commercial and exhibition elk licenses be restricted?
- What standards should be required upon relinquishment or revocation of a Type 1 license?

Staff has proposed a specific approach to each of these policy issues, plus alternative policy choices the Commission may wish to consider. Please note two ways in which the staff proposal has evolved since the proposed rule package was sent out for public comment.

First, the proposed rule package did not propose requiring a bond or business insurance of licensees. We now believe that some kind of financial security should be required, and have developed an approach we believe is reasonable. This is discussed more fully in the staff summary concerning OAR 635-049-0175.

Second, staff did not intend to propose changing current rule requirements allowing the use of wooden fence posts. The rule package sent out for public comment did not make this clear.

OPTIONS

1. Adopt rule amendments as proposed.
2. Adopt the amendments in some amended form.
3. Not adopt any amendments.

STAFF

RECOMMENDATION

Adopt staff recommendation (Option 1).

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| DRAFT MOTION ISSUE 1 | I move to amend OAR 635-200-0090 as proposed by staff. |
| ISSUE 2 | I move to amend OAR 635; Divisions 045 and 049 as proposed by staff. |
| EFFECTIVE DATE | |