

Agenda Item Summary

BACKGROUND

The Commission's Division 001 rules govern suspension and revocation of angling, hunting or trapping privileges under the Wildlife Violator Compact. The Department has issued 126 suspensions under the Compact, which was created in 1989 and now includes all Western states plus several in the Midwest and a few in the East. The terms of the Compact appear at ORS 496.750 (Attachment 2). The purpose of the Compact is to strengthen enforcement of the wildlife laws across the nation by allowing home states to sanction their residents who violate hunting or angling laws in another state.

On April 4, 2008, the Department issued to Patrick Havens of Medford a Notice of Intent to Suspend Hunting and Angling Licenses, Tags and Permits (Attachment 3). That Notice proposed to suspend the hunting and angling privileges of Patrick Havens pursuant to the Compact based upon his violation of hunting laws in Nevada. The Notice offered Patrick Havens the opportunity to challenge the proposed action in a contested case hearing. On April 11, 2008, Patrick Havens availed himself of that opportunity and on May 28, 2008 the case was referred to an Administrative Law Judge from the Office of Administrative Hearings. The Administrative Procedures Act governs procedure in contested case proceedings.

On July 17, 2008, a prehearing conference took place and November 4, 2008 a telephone hearing was held. The issues to be decided were whether Mr. Havens' hunting, trapping, and angling privileges were suspended in Nevada for an offense that could have been the basis for suspension of his license privileges in Oregon and if so, whether the Department should suspend Mr. Havens' hunting, trapping and angling privileges in Oregon until March 9, 2010.

On December 3, 2008 ALJ Jennifer Rackstraw issued a Proposed Order upholding the Department's position and proposing that Mr. Havens' hunting, trapping and angling privileges be suspended until March 9, 2010 (Attachment 4). Mr. Havens was given 15 days to file exceptions to the proposed order. An exception was not filed. At this point, the Commission must determine what type of Final Order to issue. The Commission must "stay within the record," meaning that the Commission must consider only those facts that were put before the ALJ. The law does not require that the Commission allow a verbal presentation by Mr. Havens. The law does not permit the taking of public testimony on this agenda item. The Commission may confer with Department staff and legal counsel at the meeting, so long as the discussion stays within the record.

The Commission is entitled to make its own determination based on the official record of the case. If the Commission changes the ALJ's Proposed Order in any substantial way, it must explain why it has made those changes (OAR 137-003-0665).

PUBLIC INVOLVEMENT As noted above, the law does not require that the Commission allow a verbal presentation by Mr. Havens.

ISSUE 1 Should the Commission suspend the Oregon hunting, trapping *and* angling privileges of Patrick Havens?

ANALYSIS The ALJ concluded that the Commission has the legal authority to suspend Patrick Havens' hunting, trapping and angling privileges.

Mr. Havens admits that he was convicted of a wildlife violation in the state of Nevada and that his Nevada hunting, trapping and angling privileges were suspended until March 9, 2010. However, Mr. Havens does contend that suspending his Oregon hunting angling *and* trapping privileges (rather than just his hunting privileges) is excessive. The Department argues that the success of the compact depends upon "sending the strongest possible deterrent message to violators." The ALJ agreed with the Department's policy argument, and recommended suspending Mr. Havens' hunting, trapping, and angling privileges in Oregon until March 9, 2010.

OPTIONS

1. Suspend all of Mr. Havens' Oregon privileges (hunting, trapping and angling).
2. Suspend only Mr. Havens' hunting privileges.
3. Suspend only Mr. Havens' hunting and trapping privileges.

STAFF RECOMMENDATION Option 1

DRAFT MOTION

I move to issue the draft order prepared by staff as the Commission's Final Order in this case, upholding the Department's Notice of Intent to Suspend.

EFFECTIVE DATE

Upon service of the Commission's order.