

BEFORE THE OREGON DEPARTMENT OF FISH AND WILDLIFE

Oregon Department of Fish and Wildlife

v.
Patrick Havens**NOTICE OF INTENT TO SUSPEND
HUNTING & ANGLING LICENSES, TAGS
AND PERMITS****I. BACKGROUND**

Oregon law and the Wildlife Violator Compact provide for the suspension of hunting and fishing licenses, tags and permits of anyone who violates the wildlife laws of Oregon or the wildlife laws of any state that is a member of the Wildlife Violator Compact.

The Oregon Department of Fish and Wildlife is the state agency charged with regulating the take of fish and wildlife through the issuance of hunting and fishing licenses, tags and permits. The Oregon Fish and Wildlife Commission is a seven-member body appointed by the Governor and charged with making fish and wildlife policy in Oregon. The Commission has delegated to the Department its authorities under the Wildlife Violator Compact.

Based upon the following facts and conclusions of law and the Department's file on this case, the Department proposes to suspend your Oregon hunting and angling privileges. This Notice explains what the Department proposes to do, and how you can challenge the Department's proposed action.

II. FINDINGS OF FACT

1. You were convicted in the state of Nevada, of unlawful killing or possession of a mule deer (no license or permit).
2. As a result, Nevada suspended your Nevada hunting and angling privileges from March 9, 2007 until March 9, 2010.
3. Under Oregon law, it is unlawful to kill or possess a mule deer without a valid license or tag. ORS 496.162 ORS 496.690 OAR 635-065-0015 635-065-0001.
4. Oregon law authorizes suspension of licenses, tags and permits of any person convicted of a violation of the wildlife laws. ORS 497.415.

III. APPLICABLE LAW

1. The Wildlife Violator Compact is incorporated into Oregon law at Oregon Revised Statutes (ORS) 496.750. The Compact is an agreement among many states in which the states agree to (among other things) take action against their residents who violate wildlife laws in other states.

2. ORS 497.415(4) provides in relevant part that:

“(4) For purposes of the Wildlife Violator Compact, the commission shall:...

(b) Revoke a violator’s license for a conviction in a party state. A report of conviction from the licensing authority of the issuing state shall be conclusive evidence.”

3. Oregon Administrative Rules (OAR) 635-001-205 through -215 provide our procedures for revoking or suspending licenses, tags and permits under the Wildlife Violator Compact. Those rules provide as follows:

635-001-0205

Definitions

The Wildlife Violator Compact, ORS 496.715, defines "suspension" to include any revocation, denial or withdrawal of any or all license privileges. However, to insure consistency with other applicable law, the terms "revocation" and "suspension" as used in these rules shall have the following meaning:

(1) "Revocation" means to cancel, annul and make void for the entire remainder of the term of any license.

(2) "Suspension" means to temporarily discontinue and interrupt a license, but with an expectation that it may be reinstated upon the occurrence of a specific event, such as evidence of compliance with a citation.

635-001-0210

Standard for License Suspension or Revocation

(1)(a) Upon receipt of the following information from a party state to the Compact, the Director shall initiate license suspension proceedings in accordance with OAR 635-001-0215:

(b) That a person has failed to comply with the terms of a citation for a fish or wildlife offense from the licensing authority of a party state. Such suspension shall remain in effect until the Director receives adequate evidence of compliance with the citation.

(2) Upon receipt of the following information from a party state to the Compact, the Director or Commission may initiate license suspension or revocation proceedings as appropriate in accordance with OAR 635-001-0215.

(a) That a person has had his or her license privileges suspended or revoked in a party state for a fish and wildlife offense which could have been the basis for suspension or revocation of license privileges in Oregon. The period of suspension is the period provided by Oregon statute for an equivalent offense or such longer period imposed by the party state.

(b) That a person has been convicted in a party state of a fish or wildlife offense. The period of suspension is the period provided by Oregon statute for an equivalent offense or such longer period imposed by the party state.

(3) Any suspension under this rule begins when the Commission or Department issues a final order of suspension.

635-001-0215

Procedures to Suspend or Revoke

(1) When the Director is notified of a failure to comply with the terms of a citation from the licensing authority of a party state, the Director shall initiate license suspension proceedings in accordance with this section.

(2) When the Commission has been notified of any of the conditions under OAR 635-001-0210(2), the Director or Commission may initiate license suspension or revocation proceedings in accordance with this section.

(3) The person shall be notified in writing of the Director's or Commission's intention to suspend, revoke, or refuse to issue, licenses and tags, and shall be provided with an opportunity to request a hearing within 14 days of the date of mailing.

(4) If at the end of 14 days no response has been received, a final order shall be issued suspending, revoking or refusing to issue license privileges and mailed by certified mail to the person.

(5) If prior to 14 days from the date of mailing the person submits a request for a hearing, a hearing will occur. At the discretion of the Department, the case may be reviewed in writing upon stipulation by the licensee or a hearing may be scheduled before the administrative law judge.

(6) Following the administrative law judge's review, a proposed order in the form prescribed by OAR 137-003-0070, including findings of fact and conclusions of law, shall be prepared by the administrative law judge, served on all parties, and shall be forwarded to the Director or Commission.

(7) In accordance with ORS Chapter 183, the Director or Commission shall provide an opportunity to all parties to respond in writing within 14 days to the proposed order of the administrative law judge.

(8) A final order shall be reviewed and signed by the Director or Commission chair and all parties shall be provided a copy by certified mail.

IV. CONCLUSIONS OF LAW

1. The Wildlife Violator Compact, of which Oregon is a party, authorizes Oregon to suspend the hunting and angling privileges of anyone who violates wildlife laws in

another state if such violations would (if committed in Oregon) subject the person to suspension under Oregon law.

2. You were convicted of violating provisions of Nevada wildlife law equivalent to those in Oregon for which, under Oregon law, your hunting and angling privileges may be suspended.
3. Therefore, the Department and Commission are authorized to suspend your Oregon hunting and angling privileges.

V. PROPOSED ORDER

That the Department suspend your Oregon hunting and angling privileges until April 25, 2010.

VI. HEARING

You have the right, if you so request, to have a formal contested case hearing before an administrative law judge regarding the Department's proposal to revoke your hunting privileges. Such a hearing would be governed by ORS Chapter 183 and ORS 496.750, 497.415 and 497.435 and OAR 635-001-0200 through -0215, at which time you may be represented by an attorney and subpoena and cross-examine witnesses. Your request must be made in writing to the Department, and must be received within fourteen (14) days from the date of service of this notice.

Following receipt of a timely request for hearing, the State's Office of Administrative Hearings will notify you of the date, time and place of the hearing.

VII. FINAL ORDER

If you fail to file a timely request for hearing or fail to appear at a scheduled hearing, the Department may issue a default final order and judgment. If the Department issues a final order by default, the Department designates its files on this matter as the record for purpose of proving a prima facie case upon default.

Issued this 4th day of April, 2008.



Ron Anglin
Wildlife Division Administrator
Oregon Department of Fish and Wildlife