

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
DEPARTMENT OF FISH & WILDLIFE**

IN THE MATTER OF:) **PROPOSED ORDER**
) OAH Case No. 800559
PATRICK HAVENS) Agency Case No. 0508Havens
Appellant

HISTORY OF THE CASE

On April 4, 2008, the Oregon Department of Fish & Wildlife (ODFW) issued a Notice of Intent to Suspend Hunting & Angling Licenses, Tags and Permits to Patrick Havens. On April 11, 2008, Mr. Havens requested an administrative hearing. On May 28, 2008, ODFW referred the hearing request to the Office of Administrative Hearings (OAH).

A telephone hearing was held on November 4, 2008, with Senior Administrative Law Judge Jennifer H. Rackstraw of the OAH presiding. Mr. Havens represented himself at the hearing and testified. Senior Assistant Attorney General William Cook represented ODFW. DeAnna Erickson, ODFW’s license services manager, testified for ODFW. The record closed at the end of the hearing.

ISSUES

(1) 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.

(2) If so, whether ODFW may suspend Mr. Havens’ hunting, trapping, and angling privileges in Oregon until March 9, 2010.

EVIDENTIARY RULINGS

Exhibits A1 and A2, offered by ODFW, were admitted into the record without objection. The Notice of Intent to Suspend Hunting and Angling Licenses, Tags and Permits is hereby marked as Pleading P1, and admitted into the record as such.

FINDINGS OF FACT

(1) Oregon and Nevada are both parties to the Interstate Wildlife Violator Compact (Compact). Parties to the Compact have access to a shared database that contains information regarding licensing actions that occur in the various party states. When a person’s license is suspended (or revoked) in one party state for a violation of that state’s wildlife laws, the party

enters the suspension (or revocation) information in the database so that the other party states are alerted to the information. (Test. of Erickson.)

(2) Oregon has been using the Compact database since March 2006. At least once per month, DeAnna Erickson, ODFW's license services manager, pulls a report from the database that contains notices of Oregon residents who have had their wildlife privileges suspended (or revoked) in other party states. Once Ms. Erickson receives a notice on a particular person, she determines whether the violation in the other state is comparable to an Oregon violation. If the violations are comparable, Mr. Erickson requests that the other state send her a hard copy of the violation. Ms. Erickson then prepares a Notice of Intent to Suspend (or Revoke) the person's Oregon privileges. (Test. of Erickson.)

(3) To date, Ms. Erickson has received 126 notices of Oregon residents who have had their wildlife privileges suspended in other party states. Each of the 126 cases has led to the suspension of the resident's Oregon wildlife privileges. (Test. of Erickson.)

(4) In the State of Nevada on March 9, 2007, Mr. Havens pled guilty to Unlawful Killing or Possession of a Deer, a gross misdemeanor under Nevada Revised Statute (NRS) 501.376(4). In addition to a monetary fine and penalty, Mr. Havens' Nevada hunting, fishing, and trapping privileges were suspended for three years, effective March 9, 2007. (Exs. A1, A2.)

(5) Mr. Havens is currently an Oregon resident. (Ex. A2.) Ms. Erickson received a notice from the Compact database, which indicated that Mr. Havens' hunting, trapping, and fishing privileges in Nevada were suspended from March 9, 2007 to March 9, 2010. (Ex. A2; test. of Erickson.) Ms. Erickson requested that Nevada send her additional information regarding the suspension. She subsequently received a Judgment of Conviction (Plea), dated April 2, 2007. (See Ex. A1; test. of Erickson.)

(6) On April 4, 2008, ODFW issued a Notice of Intent to Suspend Hunting & Angling Licenses, Tags and Permits to Mr. Havens. (Pleading P1.)

CONCLUSIONS OF LAW

(1) 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.

(2) ODFW may suspend Mr. Havens' hunting, trapping, and angling privileges in Oregon until March 9, 2010.

OPINION

ODFW bears the burden of establishing by a preponderance of the evidence that it (or the Oregon Fish and Wildlife Commission)¹ may suspend Mr. Havens' hunting, trapping, and

¹ For purposes of this order, there are no significant differences between ODFW and the Oregon Fish and Wildlife Commission (Commission). The Notice of Intent to Suspend Hunting & Angling Licenses, Tags and Permits provides the following explanation of the two entities:

angling privileges in Oregon until March 9, 2010. ORS 183.450(2) (“The burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position”); *Harris v. SAIF*, 292 Or 683, 690 (1982) (general rule regarding allocation of burden of proof is that the burden is on the proponent of the fact or position); *Metcalf v. AFSD*, 65 Or App 761, 765 (1983) (in the absence of legislation specifying a different standard, the standard of proof in an administrative hearing is preponderance of the evidence). Proof by a preponderance of the evidence means that the fact finder is persuaded that the facts asserted are more likely than not true. *Riley Hill General Contractors v. Tandy Corp.*, 303 Or 390, 402 (1987).

The following facts are undisputed: (1) Mr. Havens was convicted of the unlawful killing or possession of a deer in the State of Nevada; (2) As a result of the conviction, Nevada suspended Mr. Havens’ hunting, trapping, and angling privileges in that state from March 9, 2007 to March 9, 2010; and (3) Both Oregon and Nevada are parties to the Compact.

ORS 496.750 incorporates the Compact into Oregon law and provides, in relevant part:

ARTICLE I
FINDINGS, DECLARATION OF POLICY AND PURPOSE

(a) The party states find that:

* * * * *

(4) Wildlife resources are valuable without regard to political boundaries, therefore, all persons should be required to comply with wildlife preservation, protection, management and restoration laws, ordinances and administrative rules and regulations of all party states as a condition precedent to the continuance or issuance of any license to hunt, fish, trap or possess wildlife.

* * * * *

(6) The mobility of many wildlife law violators necessitates the maintenance of channels of communications among the various states.

* * * * *

(b) It is the policy of the party states to:

[ODFW] 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 [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 [ODFW] its authorities under the [Compact.]

Pleading P1.

(1) Promote compliance with the statutes, laws, ordinances, regulations and administrative rules relating to management of wildlife resources in their respective states.

(2) Recognize the suspension of wildlife license privileges of any person whose license privileges have been suspended by a party state and treat this suspension as if it had occurred in their state.

* * * * *

(4) Report to the appropriate party state, as provided in the compact manual, any conviction recorded against any person whose home state was not the issuing state.

(5) Allow the home state to recognize and treat convictions recorded for their residents which occurred in another party state as if they had occurred in the home state.

* * * * *

(c) The purpose of this compact is to:

(1) Provide a means through which the party states may participate in a reciprocal program to effectuate policies enumerated in subdivision (b) of this Article in a uniform and orderly manner.

(2) Provide for the fair and impartial treatment of wildlife violators operating within party states in recognition of the person's right of due process and the sovereign status of a party state.

ARTICLE II DEFINITIONS

As used in this compact, unless the context requires otherwise:

* * * * *

(d) "Conviction" means a conviction, including any court conviction, of any offense related to the preservation, protection, management or restoration of wildlife which is prohibited by state statute, law, regulation, ordinance or administrative rule[.]

(e) "Court" means a court of law, including Magistrate's Court and Justice Court.

* * * * *

(m) "Suspension" means any revocation, denial or withdrawal of any or all license privileges, including the privilege to apply for, purchase or exercise the benefits conferred by any license.

* * * * *

ARTICLE III PROCEDURES FOR ISSUING STATE

* * * * *

(c) Upon conviction * * *, the appropriate official shall report the conviction * * * to the licensing authority of the party state in which the wildlife citation was issued [.]

(d) Upon receipt of the report of conviction * * *, the licensing authority of the issuing state shall transmit to the licensing authority in the home state of the violator the information in a form and content as contained in the compact manual.

ARTICLE IV PROCEDURES FOR HOME STATE

* * * * *

(b) Upon receipt of a report of conviction from the licensing authority of the issuing state, the licensing authority of the home state shall enter such conviction in its records and shall treat such conviction as if it occurred in the home state for the purposes of the suspension of license privileges.

* * * * *

ARTICLE V RECIPROCAL RECOGNITION OF SUSPENSION

All party states shall recognize the suspension of license privileges of any person by any state as if the violation on which the suspension is based had in fact occurred in their state and could have been the basis for suspension of license privileges in their state.

Former ORS 497.415 (effective through December 31, 2007)² allows the Commission to suspend or revoke Oregon wildlife licenses under the Compact, and provides, in relevant part:

² The 2007 Oregon Legislative Assembly amended ORS 497.415, but the legislative bill provided that "[a]mendments to ORS 497.415 by section 1 of this 2007 Act apply only to the suspension or revocation

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

* * * * *

(b) Revoke³ 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.

(5) No person who has had a license, tag or permit revoked pursuant to this section for the first time shall apply for or obtain another such license, tag or permit for the period of 24 months from the date the court ordered the revocation.

The Commission has promulgated several administrative rules regarding the revocation and suspension of Oregon hunting, trapping, and angling privileges under the Compact.

Former OAR 635-001-0210 (effective June 9, 2006 through December 31, 2007)⁴ is titled "Standard for License Suspension and Revocation" and provides, in relevant part:

(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 an offense which could have been the basis for suspension or revocation of license privileges in Oregon. Where the

of a violator's license by a party state made on or after the effective date of this 2007 Act [January 1, 2008]. Or Laws 2007, ch 257, §2. Because Nevada suspended Mr. Haven's wildlife privileges as of March 9, 2007, the former version of ORS 497.415 applies here.

³ OAR 635-001-0205 provides:

The Wildlife Violator Compact * * * defines "suspension" to include any revocation, denial, or withdrawal of any or all license privileges. However, to ensure 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.

⁴ This version of the rule was in effect at the time of Mr. Haven's wildlife law violation.

Commission chooses to suspend, such suspension shall remain in effect until the Commission receives adequate evidence of reinstatement of license privileges in the party state [.]

OAR 635-001-0215 is titled “Procedures to Suspend or Revoke” and provides, in part:

(2) When the Commission has been notified of any of the conditions under 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.

1. Whether the Nevada offense is comparable to an Oregon offense

As previously set forth, Mr. Havens was convicted of the Unlawful Killing or Possession of a Deer, in violation of NRS 501.376(4). As a result, his Nevada wildlife privileges were suspended for three years.

Oregon law also authorizes the suspension of a person’s wildlife privileges for the killing or possession of a deer in Oregon without a valid license or tag.

Former ORS 497.415 provides, in relevant part:

(1) Except as provided in ORS 497.435, when any person is convicted of a violation of law or any rule adopted pursuant thereto * * * as provided in subsection (2) of this section, the court may order the State Fish and Wildlife Commission to revoke such of the licenses, tags and permits issued to that person pursuant to the wildlife laws as the court considers appropriate [.]

(2) The license, tag and permit revocation provisions of subsection (1) of this section apply to the following persons:

(a) Any person who is convicted of a violation of the wildlife laws, or any rule adopted pursuant thereto [.]

ORS 497.075 is titled “General license, tag and permit requirements; exemptions” and provides, in part:

(1) Except as provided in subsections (2), (3) and (4) of this section, no person shall angle for, take, hunt or trap, or assist another in angling for, taking, hunting or trapping, any wildlife unless the person has in

possession such valid licenses, tags and permits therefore as the State Fish and Wildlife Commission issues.

ORS 496.690 is titled "Possession of wildlife as evidence of illegal taking" and provides:

The fact that any person has any wildlife, or any part thereof, in possession when it is illegal to take or have same is prima facie evidence that such person killed such wildlife illegally.

OAR 635-065-0015 is titled "General Tag Requirements and Limits" and provides, in part:

(1) Big Game Tags: Any person hunting game mammals for which a tag is required must have on their person a valid tag for the dates, area and species being hunted.

* * * * *

(4) [A] person may obtain and possess only one of the following tags during an annual hunting season:

- (a) One valid deer bow tag;
- b) One valid western Oregon deer tag;
- (c) One valid 100 series controlled buck hunt tag;
- (d) One valid 600 series controlled antlerless deer tag in addition to one of (4)(a)-(4)(c) and (4)(e);
- (e) One valid 100 series "left over" controlled deer tag;
- (f) One valid 600 series "left over" controlled deer tag.

Because Mr. Havens' Nevada wildlife privileges were suspended for an offense that, if it had been committed in Oregon, could have resulted in the suspension of his Oregon wildlife privileges, ODFW may suspend Mr. Haven's Oregon privileges. *Former* OAR 635-001-0210(2)(a).

2. Whether ODFW may suspend all of Mr. Havens' Oregon privileges until March 9, 2010

The remaining issue is whether ODFW may suspend Mr. Havens' hunting, trapping, and angling privileges in Oregon until March 9, 2010.

Mr. Havens contends that the imposition of a three-year suspension of his Oregon privileges is excessive. The relevant statutes and rules (applicable to the time period at issue) do not clearly specify how long ODFW (or the Commission) may suspend Mr. Havens' privileges.

Based on language contained in *former* ORS 497.415(5), the Commission has adopted the practice of beginning the period of license suspension in Oregon when the party state begins the license suspension in the party state. *Former* ORS 497.415(5) provides, in relevant part:

No person who has had a license, tag or permit revoked pursuant to his section for the first time shall apply for or obtain another such license, tag or permit for the period of 24 months from the date the court ordered the revocation.

(Emphasis added.)

ODFW points out that the only "court" that is involved in a Compact case is the court in the party state that originally suspended the person's privileges in the party state. *Former* ORS 497.415(5) seems to contemplate discipline in Oregon that begins as of the date discipline was ordered to begin in the party state. Thus, it is reasonable for the Commission to begin the suspension of Mr. Havens' Oregon privileges on March 9, 2007—the date his Nevada suspension began.

Former OAR 635-001-0210(2)(a) provides, in relevant part:

[W]here the Commission chooses to suspend, such suspension shall remain in effect until the Commission receives adequate evidence of reinstatement of license privileges in the party state [.]

ODFW interprets *former* OAR 635-001-0210(2)(a) as requiring the Commission to suspend Oregon privileges for the time period imposed by the party state. ODFW further interprets the rule as granting the Commission no discretion in determining the length of a suspension pursuant to the Compact, as evidenced by the word "shall." ODFW's interpretation of its own administrative rule is entitled to deference so long as it is not inconsistent with the text of the rule, the organic statute, or any other source of controlling law. *See Don't Waste Oregon Com. v. Energy Facility Siting*, 320 Or 132, 142 (1994) ("[w]here * * * the agency's plausible interpretation of its own rule cannot be shown either to be inconsistent with the wording of the rule itself, or with the rule's context, or with any other source of law, there is no basis on which this court can assert that the rule has been interpreted 'erroneously.'") I find that ODFW's interpretation of its rule is consistent with the text of the rule, the organic statute, and any other source of controlling law. Thus, the interpretation is entitled to deference, and ODFW may suspend Mr. Havens' Oregon privileges from March 9, 2007 to March 9, 2010.

Finally, Mr. Havens contends that because his Nevada conviction involved only a hunting issue, ODFW should not suspend his Oregon trapping and fishing privileges (in addition to his hunting privileges). The relevant statutes and rules (applicable to the time period at issue) do not specify the scope of the Commission's suspension authority. However, when a person is

convicted of violating a wildlife law or rule, *former* ORS 497.415(1) provides that the court may order the Commission “to revoke such of the licenses, tags and permits issued to that person pursuant to the wildlife laws as the court considers appropriate[.]” Neither this statute nor any other statute or rule in effect at the time of Mr. Havens’ violation *prohibits* the Commission from suspending a Compact violator’s hunting, trapping, and angling privileges in Oregon, even if the violation in the party state was limited to only hunting, for example.

ODFW argues that, as a policy matter, the scope of the Commission’s suspension authority should be broadly construed because the success of the Compact depends upon “sending the strongest possible deterrent message to violators.” *ODFW’s Hearing Memorandum* at 2. I find this argument persuasive and conclude that the Commission has the authority to suspend Mr. Havens’ hunting, trapping, and angling privileges in Oregon, even though his Nevada violation only pertained to hunting.⁵

For the reasons set forth above, Mr. Havens’ hunting, trapping, and angling privileges are suspended until March 9, 2010.

ORDER

I propose the Oregon Department of Fish & Wildlife issue the following order:

The suspension of Patrick Havens’ hunting, trapping, and angling privileges until March 9, 2010 is AFFIRMED.

Jennifer H. Rackstraw

Senior Administrative Law Judge
Office of Administrative Hearings

ISSUANCE AND MAILING DATE: December 3, 2008

APPEAL PROCEDURE

This is the Administrative Law Judge’s Proposed Order. Pursuant to OAR 635-001-0215(7), the parties may file written exceptions to the Proposed Order within 14 days after service of the order. Exceptions should be addressed to:

Oregon Fish and Wildlife Commission
3406 Cherry Ave. NE
Salem, OR 97303.

⁵ I also note that Nevada suspended Mr. Havens’ hunting, trapping, and angling privileges, instead of suspending only his hunting privileges in that state.

APPENDIX A
LIST OF EXHIBITS CITED

- Ex. A1: Judgment of Conviction, dated April 2, 2007.
- Ex. A2: Interstate Wildlife Violators Compact System printout.

CERTIFICATE OF MAILING

On December 3, 2008, I mailed the foregoing Proposed Order in OAH Case No. 800559.

By: First Class and Certified Mail

Certified Mail Receipt #7008 1300 0000 4648 4388

Patrick Havens
4584 Wolf Run Dr
Medford OR 97504

By: First Class Mail

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