

## Agenda Item Summary

### BACKGROUND

A review of Division 44 administrative rules involving protected wildlife, holding and propagation, was conducted to determine if the rules maintain relevance to current issues addressed by the Department and Oregon State Police. Specifically, staff was directed to determine if:

- 1) The current rules address situations and issues within the state, regionally, and nationally involving legal and illegal holding of wildlife; and
- 2) Whether they provide clear direction for law enforcement in cases that might lead to seizure of illegally held wildlife.

The defined goal of this effort was to provide recommendations concerning potential rulemaking changes that outline clear policy and procedures for evaluating wildlife holding permit requests and propagation licenses, and to update and define protected wildlife. The holding of live wildlife by the public requires evaluation of each case by biologists, the permit coordinator, and other Division staff. Additionally, rules involving protected wildlife and wildlife holding must provide clear direction to Oregon State Police (OSP) when reports of illegally held wildlife requires investigation, intervention, or animal confiscation.

Due to the number of species and unique circumstances involved in holding requests, regulating the legal holding of wildlife can be complex. Many of the decisions involve public safety, potential disease issues, determination of species abundance and distribution, and developing standards for holding and care. These recommendations were developed to protect and enhance Oregon's wild and free-ranging wildlife resource while also recognizing the need for allowing limited, regulated holding of captive wildlife.

In 2013, Department staff met with OSP personnel and the Department of Agriculture State Veterinarian multiple times to discuss general issues, questions, and goals related to wildlife holding permits and the circumstances under which a permit may be issued. The group also reviewed the species approved for public holding with or without a permit; species not approved for public holding; exceptions to the permit process; and ultimately, how these issues affect the investigative process which may include the seizure and disposition of illegally held wildlife. Other important issues discussed were quarantine, disease testing, animal placement, and policy as it relates to OARs in other Divisions or Chapters.

Specific section revisions, additions, or deletions and justifications and notes are included in the Summary Table (Attachment 5).

## **PUBLIC INVOLVEMENT**

Beginning in December 2013, an invited 23 member advisory group of agency and public stakeholder representatives was convened as the Wildlife Holding Advisory Group (WHAG). The WHAG members, inclusive of the Audubon Society of Portland, exotic pet industry, Oregon Hunters Association, Oregon Humane Society, Department of Agriculture, Oregon State Police, and the Department, met on six occasions in 2014.

A critical review of Division 44 rules by the WHAG lead to several major proposals directing wildlife holding including:

- Removing the classification of Non-protected Nongame Wildlife and reclassifying species that may be collected with defined conditions. Under the proposed rules, all free-ranging wildlife is either protected or may be held through regulated conditions. The holding of live wildlife addressed in these rules would only be allowed by permit including grandfathered animals, species under a propagation permit, and for more than two of a limited list of nongame species classified as distributed widely, abundant and secure through scientific monitoring of their populations.
- Increasing the scope of the Wildlife Holding Permit to include legally possessed captive wildlife prior to adoption of these revised rules and provide a “Grandfathering” provision for animals including captive black bear, cougar, bobcat, raccoon, skunk, squirrels, and chipmunks.
- Requiring the holding of new acquisitions of captive black bear, cougar, bobcat, wolves, raccoon, and skunk to be in facilities accredited by Association of Zoos and Aquariums (AZA) or those that are grandfathered to be held in facilities meeting the requirements of the ODFW Enclosure and Caging Standards for Holding Wildlife.
- Discontinuing the practice and allowance of public holding of large carnivores, other mammals, and animals that are not considered non-game or species not listed as not widely distributed, abundant and secure unless held in AZA accredited facilities or regulated under other rules or as part of the adoption of these rules or under circumstances approved by the Director.
- Using a defined system for holding nongame wildlife based on science and designed to rank and classify species according to their abundance and distribution, and classified as demonstrably widespread, abundant, and secure.

- Expanding Exhibit 1 (Minimum Enclosure and Caging Standards for Holding Bear *Ursus americanus* and Cougar *Felis concolor*) to include all species held with a Wildlife Holding Permit.
- Redefining the scope of species allowed under a propagation permit to only include select game bird species.

A stakeholder letter with a draft of the proposed rules and Exhibit 1, caging standards were sent on January 14, 2016 to 124 stakeholders, including wildlife holding permit holders, propagation license holders, zoos, wolf permit holders, interested publics and non-game wildlife collectors, and known holders of wildlife previously not required to have a permit (e.g. bears, cougars which only required a facility inspection). The Department presented the WHAG and staff recommendations before the Commission for an informational briefing during the March 18, 2016 commission meeting with written and spoken comments by affected parties and interested stakeholders.

The Division 44 rule recommendations are presented with considerations and potential alternatives based on public input and direction from the commission from the March 18, 2016 commission meeting. The public review of draft rules highlighted several key issues for further revision consideration:

- Background for the designation of the nongame species permitted for holding under a Wildlife Holding Permit
- Limitation of species of snakes and amphibians to the list of allowable species held and therefore added to the protected wildlife list
- Reproductive sterilization of reptiles and amphibians held on a Wildlife Holding Permit
- Hybridity of wolves and bobcats
- Wildlife held in an AZA accredited facility vs. USDA license classification
- Impacts to the use of animals for education and in the entertainment industry
- Holding of raccoons
- Holding of pet skunks

Each of the issues and staff recommendations are discussed below.

Members of the public are presently provided the opportunity to view the final rule proposals via website information as part of a press release issued prior to the June Commission meeting. The public will also have the opportunity to review the packet at the Commission meeting and provide written and/or verbal testimony.

## **ISSUE 1**

### **Background for the designation of the nongame species permitted for holding under a Wildlife Holding Permit**

#### **ANALYSIS**

The WHAG determined that in order to protect Oregon's wildlife and allow the holding of some species, a scientific-based classification system would be required to justify a list of nongame species for permanent holding of native non-game species. ODFW is already a member partner of the Oregon Biodiversity Information Center (ORBIC), an institution based at Portland State University and part of the Institute for Natural Resources (INR). ORBIC leads INR's biodiversity and conservation efforts with a key function to maintain, develop and distribute biodiversity information in Oregon. The center works with partners across the region to provide the most comprehensive information on plants, wildlife, fish, fungi, and vegetation communities throughout Oregon. The Center maintains the most comprehensive database of rare, threatened and endangered species of Oregon, and classifies species abundance, distribution, and population security based on scientific-based principals. ORBIC was originally formed by the Oregon Legislature in 1979 as the Oregon Natural Heritage Program.

NatureServe, a non-profit partner organization initiated by The Nature Conservancy and a collection of public and private partners, built a network of natural heritage programs in the United States to collect and manage data about the status and distribution of species and ecosystems of conservation concern. ORBIC working in coordination with NatureServe provide scientific expertise for conservation. Dynamic data, tools, and resources help guide conservation actions involving wildlife, plants, and ecosystems.

Under this classification system, WHAG members and staff proposed including nongame wildlife species scientifically shown to be demonstrably widespread in distribution, considered abundant, and secure as a population. These nongame species are listed in the S5 (State 5) classification and includes over 30 species of reptiles, amphibians, and small mammals native to Oregon.

## **ISSUE 2**

### **Limitation of allowable species of snakes and amphibians to be held**

#### **ANALYSIS**

Staff believes that the WHAG and staff proposal to only include S5 classified species provides the best estimate for balancing the protection of most nongame wildlife species while allowing the holding of only those species scientifically shown to be demonstrably widespread in distribution, considered abundant, and secure as a population. Other classifications were considered and discussed, however conflicts invariably arose in that not all species had robust data or there were other issues involving rules, statutes and differences of professional opinions. The WHAG proposed to provide language in rule to provide for the inclusion of additional species by petition to the commission.

**ISSUE 3****Reproductive sterilization of reptiles and amphibians held on a Wildlife Holding Permit****ANALYSIS**

Proposed rule specifies that native nongame wildlife cannot be propagated or their parts or products sold. Avoidance of reproduction of nongame wildlife of different sexes can be accomplished by separation of the sexes, disposal of eggs, potential veterinary sterilization, etc., and is the responsibility of the wildlife holding permittee.

**ISSUE 4****Documentation of hybrid genetic pedigree of wolves and bobcats****ANALYSIS**

Staff and the WHAG felt that the burden of proof should be the responsibility of the owner for an animal's genetic status as a hybrid. Animals possessing the phenotypical traits of a genetically pure wolf or bobcat would require documentation in the form of breeding evidence by pedigree and record, records of acquisition and disposition, transactions, and sworn statements to identify to the Department's satisfaction that the animal is a hybrid-cross. Genetic testing may be conducted by the Department at the Department's expense. Lack of sufficient proof of hybridity as determined by the Department will genetically classify the animal as a bobcat or wolf requiring a Wildlife Holding Permit or Wolf Holding Permit and regulation under the conditions of these rules including caging and facility requirements.

**ISSUE 5****Wildlife held in an AZA accredited facility vs. USDA license classification****ANALYSIS**

The WHAG and staff recommend that grandfathered animals be held in Department approved caging and enclosures presented in Exhibit 1 for the life of the animal. Grandfathered species of animals (black bears, cougars, bobcats, wolves, raccoons, and several other mammals) obtained after the adoption of these rules would be required to be held in an Association of Zoos and Aquariums accredited facility. Staff believes the AZA accredited facility standards are an established standard providing the apical level of care for captive animals. This rule would allow grandfathered animals to be held within a defined standard of care for the remainder of the animal's life but discourage the public holding of carnivores. The rule also provides for exceptions under approval by the Director which may include animals held for education or other uses.

Related to AZA Accreditation, USDA licensing is a permit held by animal owners and businesses regulated under the Animal Welfare Act. Class A licensees are breeders and deal only in animals they breed and raise; Class B licensees include brokers, benchers, and operators of auction sales; Class C licenses include animal exhibitors. Holders of Oregon wildlife that do not exhibit their animals to the public or sell wildlife through a propagation license are not required to hold a USDA license. Animal preserves, hunting events, reptile houses, aviaries, and aquariums are also exempt. The Federal animal care standards associated

with USDA licensing provide standards for humane handling, housing, space, feeding and watering, sanitation, ventilation, shelter from extremes of weather, adequate veterinary care, and separation of incompatible animals, transportation, and handling in transit. AZA accredited facilities are also USDA licensed. With few exceptions (zoological parks and collections, entertainment animals, education animals), the majority of the grandfathered animals and wildlife held on a Wildlife Holding or Wolf Holding permit will not require USDA licensing because the animals cannot be bred or sold and will not be held on exhibit to the public. Under the proposed rules, a USDA permit does not satisfy the AZA requirement but would be considered an essential component of exception by the Director.

## **ISSUE 6**

### **Impacts to the education and animal entertainment industries**

#### **ANALYSIS**

There are several education and animal entertainment businesses operating in the state. Concerns were raised by these business owners related to the grandfathered wildlife species held (black bears, cougars, bobcats, wolves, raccoons) in their businesses. These concerns included not being able to breed wildlife, requiring the burden of proof for hybridness, restrictive transport rules, and AZA accreditation required if additional animals were added to their grandfathered collection.

Staff does not believe the rule proposals currently or directly affects these established education and animal entertainment industries, however future animal additions will require approval by the Director if AZA Accreditation is not met. Grandfathered species may not be bred and reproduced however animals could be acquired from legal out-of-state sources. These limitations may constrain some previously unregulated activities by commercial animal entertainment industries; however those industries are not limited from conducting business in Oregon with their present animal collections. Rule language was added to allow the temporary holding and transport of wildlife under the Division 44 rules.

## **ISSUE 7**

### **Holding of raccoons**

#### **ANALYSIS**

Raccoons are currently permitted to be held under a Wildlife Holding Permit. Proposed language requires raccoons to be held on an annual Wildlife Holding Permit, and regulated by the care and caging standards including allowing the raccoon owners place of residence for housing, and specifying raccoons cannot be bred/reproduced or propagated. Raccoons must be marked permanently with either a lip or ear tattoo and/or implanted microchip. Raccoons cannot be obtained from the wild. Raccoons can only be acquired from out-of-state USDA licensed Class A breeders and imported with a Certificate of Veterinary Inspection and an Oregon Department of Agriculture Import permit. Two or more held raccoons of different sexes requires sterilization of either sex to prevent breeding/ reproduction prior to sexual maturity and within 30 days of permit issuance for adult animals with written documentation of the

procedure by a licensed veterinarian. The cost of an annual Wildlife Holding Permit for raccoons is \$25 regardless of the number of raccoons held. New raccoon acquisitions must be added to the permittee's renewal application. Raccoons may not be offered for sale, trade, barter, or exchange as a household pet (ORS 498.029).

## ISSUE 8

### Holding of pet skunks

#### ANALYSIS

Oregon is one of 16 states nationally that allow the holding of pet skunks. Pet skunks in Oregon are primarily imported from USDA licensed pet skunk breeders from midwestern and southeastern states. The initial staff recommendation was modified to reflect the concerns of pet skunk owners related to the number of skunks held, ability to acquire pet skunks in the future, caging requirements, permanent marking, and transfer of ownership.

Proposed Staff Alternative: Based on direction from the commission to provide alternative rule language for holding pet skunks, staff changed the proposed language to require pet skunks to be held on an annual Wildlife Holding Permit, and regulated by the care and caging standards including allowing the pet skunk owners place of residence for housing, and pet skunks cannot be bred/reproduced or propagated. Pet skunks must be marked permanently with either a lip or ear tattoo and/or implanted microchip. Skunks can only be acquired from out-of-state USDA licensed Class A breeders and imported with a Certificate of Veterinary Inspection and an Oregon Department of Agriculture Import permit. Two or more held skunks of different sexes requires sterilization of either sex to prevent breeding/reproduction prior to sexual maturity and within 30 days of permit issuance for adult animals with written documentation of the procedure by a licensed veterinarian. The cost of an annual Wildlife Holding Permit for skunks is \$25 regardless of the number of skunks held. New skunk acquisitions or transferred animals must be added to the permittee's renewal application. Skunks may not be offered for sale, trade, barter, or exchange as a household pet (ORS 498.029).

Staff Alternative 2: Pet skunks will not require a Wildlife Holding Permit but each skunk will be registered with the department with a one-time \$25 fee per animal in addition to the standard requirements included in Alternative 1. Transferred animals will require a new registration and one-time fee from the new owner. Skunks may not be offered for sale, trade, barter, or exchange as a household pet (ORS 498.029).

Staff Alternative 3: Current situation: No Wildlife Holding Permit or registration with the Department required for pet skunks but standard requirements included in Alternative 1 will apply (marking, caging, care, etc.)

**OPTIONS**

- Option 1. Approve staff recommendations
- Option 2. Modify staff proposals
- Option 3. Reject staff recommendations

**STAFF  
RECOMMENDATION**

Option 1. Adopt staff proposed revisions to the Division 44  
Protected Wildlife, Holding, and Propagating Rules

<b>DRAFT MOTION</b>	I move to approve staff recommendations
<b>EFFECTIVE DATE</b>	Upon Filing