

MARTHA O. PAGEL

Admitted in Oregon and Washington

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June 9, 2016

BY HAND DELIVERY

Oregon Fish and Wildlife Commission
4034 Fairview Industrial Dr. SE
Salem, OR 97302

Re: Comments on Proposed Rules: Division 44 - Protected Wildlife, Holding and Propagating Rules

Dear Commissioners:

I am writing on behalf of my client, Wildlife Images Rehabilitation and Education Center (“WIREC” or the “Center”) to ask that the Commission delay action on adoption of final rules pertaining to Protected Wildlife, Holding and Propagating (Division 44). The proposed final rules do not address legal and policy concerns raised by the Center in comments submitted for the March, 2016 Commission meeting and would have the potential to significantly impair the valuable wildlife rehabilitation and education services the Center currently provides.

The attached letter dated March 15, 2016, submitted to the Department in response to the previous hearing draft, provides background about the Center, and summarizes the Center’s key concerns about the rules. Following the March Commission meeting, we expected to have an opportunity to meet with ODFW staff, or to provide input on further revisions of the proposed rules before final rules were presented to the Commission for action. That did not occur. Instead, we were surprised to see a copy of the proposed final rules along with Commission agenda materials for the first time just one week ago. The lack of process in developing the final draft rules results in both substantive and procedural concerns.

On a substantive level, none of the key issues raised in the Center’s previous comment letter have been addressed. We are particularly concerned with the continued deference and privileges offered to “AZA” accredited programs under the rules that are not offered to other important and duly authorized programs such as WIREC. Numerous provisions within the rules apply only to AZA accredited facilities or “as approved by the Director.” For example, black bears, cougars, bobcats and wolves may be held only by an AZA-accredited or as approved by

the Director (OAR 635-044-0460(2); new permits to hold pure-bred wolves may be granted only to an AZA facility or "as approved by the Director" (OAR 635-044-0460(6); no new wolves may be added to "grandfathered" collections without approval by the Director (OAR 635-044-0460(6); and grandfathered black bears, cougars, bobcats and wolves may only be transferred to an AZA accredited facility or "as approved by the Director" (OAR 635-044-0470(3). In Oregon, only the Oregon Zoo, Oregon Coast Aquarium and Wildlife Safari are AZA accredited. All other types of regulated interests – from individuals, to for-profit entertainment businesses, to non-profit rehabilitation and education facilities – are grouped together and subject to an unspecified process for obtaining approval by the Director. The rules offer no guidance as the process for seeking the Director's approval or the standards by which approval will be granted or denied, and no mechanism for assuring accountability and consistency in agency decisions. The deference to AZA accreditation also raises legal questions concerning delegation of authority from a public body to a private entity for determining qualified facilities.

Other substantive issues relating to changes in operating requirements and the impact of new fees and timelines that were raised in WIREC's previous comments also were not addressed in the revised rules or staff report.

With respect to the process, as noted in our prior comments, the Division 44 rulemaking process could provide an excellent platform for clarifying and simplifying the holding requirements applicable to rehabilitation and education facilities and for strengthening the potential public/private partnership with Department programs. Instead, the current draft recognizes no distinction between non-profit rehabilitation and education facilities and the for-profit "entertainment industry," adds unwarranted complexity and operation costs for facilities such as WIREC, and does nothing to promote a stronger partnership with the Department.

For these reasons, we ask the Commission to delay adoption until further discussions can occur regarding the impact of the proposed rules on rehabilitation and education facilities. WIREC would welcome the opportunity to participate in such discussions, and would commit to working cooperatively with the Department to achieve that objective between now and the next Commission meeting.

Sincerely,



Martha O. Pagel

MOP:kdo

Attachment

cc: Dave Siddon
Curt Melcher, Director



MARTHA O. PAGEL

Admitted in Oregon and Washington

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March 15, 2016

VIA E-MAIL

Kevin Blakely
Wildlife Division Deputy Administrator
Oregon Department of Fish & Wildlife
4034 Fairview Industrial Dr. SE
Salem, OR 97302

Re: Comments on Proposed Rules: Division 44 - Protected Wildlife, Holding and Propagating Rules

Dear Mr. Blakely:

Thank you for the opportunity to provide comments on the Oregon Department of Fish and Wildlife's ("ODFW's") proposed "Division 44" rules relating to holding and propagation of protected wildlife. Thanks also to you and Dr. Gillin for taking time to speak with me on the phone last week. The conversation was very helpful in providing background and clarifying the intent of the rules to inform these comments submitted on behalf of my client, Wildlife Images Rehabilitation and Education Center (the "Center" or "WIREC").

WIREC Background

As a preliminary matter, it may be helpful to provide some background on WIREC and its programs. The Center was founded as a non-profit corporation in 1981 by J. David Siddon to provide care and treatment of sick, injured and orphaned wildlife. WIREC has since expanded to provide education programs on wildlife, conservation, and the environment to schools, organizations and the public. The Center currently operates under the direction David A. Siddon, who continues on with his father's mission. WIREC's clinic, animal sanctuary and education center are located on 24 acres in the Grants Pass area, with a portion of the facilities located on federal land managed by the Bureau of Land Management.

Over the past 35 years, the Center has treated thousands of wildlife, with a release rate of nearly 50% -- far above the national average for similar facilities. Animals with permanently

disabling injuries or conditions that are candidates for captive management, as well as animals confiscated by authorities or privately owned and no longer wanted are, at times, integrated into the Center's educational programs as permanent residents, at no cost to the public.

WIREC is open to the public for tours throughout the year and has a very active educational program featuring birds of prey, mammals and reptiles. The Center conducts on-site education programs serving thousands of children each year. The Center's mission is simply stated: "Saving wildlife."

With its combined rehabilitation and educational purposes, WIREC occupies a somewhat unique role in Oregon. The Center has active on-site educational programs that directly involve approximately 25,000 people each year. The Center holds and exhibits a wide variety of animals including large predators and has held animals for Association of Zoos and Aquariums ("AZA") facilities. Executive Director Dave Siddon has been a member of AZA for more than 30 years, and a wildlife education and husbandry professional for 45 years. WIREC is now one of the top tourist destinations in Southern Oregon, holding a five-star rating from Trip Advisor. The Center also works directly with the USFW Forensic Lab in Ashland, and the Klamath Bird Observatory in supporting research projects. The Center also continues to contribute both data and support to state and federal agencies and other educational institutions as requested.

In accordance with state and federal requirements, WIREC holds a number of permits, including: USDA Class "C" Exhibitors Permit, USFW Holding Permits, USFW Eagle Possession and Exhibition Permit, USFW Rehabilitation Permit, ODFW Rehabilitation License, ODFW Rehabilitation License, ODFW Rehabilitation Permit, ODFW Small Mammal Holding Permit, ODFW Prohibited Species Permit, CET Euthanasia Certification by Oregon Veterinary Board, and X-Ray Certification.

Comments and Concerns Relating to the Proposed Rules

As one of the state's leading facilities to receive, rehabilitate and hold wildlife permanently for education purposes, WIREC is directly and significantly affected by the proposed rule changes. We understand the Division 44 rules have been under review through a process that began in 2013 with the formation of a Wildlife Holding Advisory Group. A WIREC staff member participated in the early stages of the rule review process, but unfortunately the Center's representation was unintentionally ended when the staff person left. We regret that the Center was not involved through the entirety of the process, but we appreciate the opportunity to provide comments now about the potential impacts to WIREC programs.

We have attached a marked-up copy of the proposed rules with specific comments and recommendations for changes. In addition, we offer the following general observations about the rule and ODFW programs:

First, WIREC is concerned that the neither the new Division 62 rules relating to wildlife rehabilitation, nor the "stand alone" provisions of Division 44 relating to wildlife holding and propagation, adequately address the important and unique functions of a combined rehabilitation



Kevin Blakely
March 15, 2016
Page 3

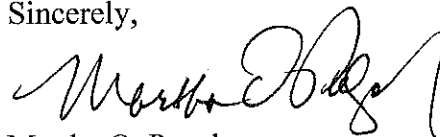
and education facility. Ideally, this major overhaul of Division 44 would have included fundamental changes to clarify and simplify the state permitting process. Instead, the proposed rules will add to the complexity and cost of operating WIREC's ongoing programs, and will make it very difficult for the Center to continue the educational experience it currently offers or plan for future educational endeavors and facility improvements. These concerns are addressed in more detail in the attached comments.

Second, WIREC is concerned that the proposed rules favor facilities licensed by the Association of Zoos and Aquariums ("AZA"), to the disadvantage of non-AZA programs. While WIREC does not question the deference granted under the rules to AZA facilities, the Center is concerned about the lack of clarity as to either the process or standards by which ODFW will make critical permitting decisions affecting non-AZA facilities. The attached comments identify numerous instances in which the rules require "approval" by the Director of ODFW for non-AZA facilities without providing any further guidance as to the criteria or process for obtaining such approval. We can appreciate the intent to provide flexibility for the Director to be able to consider different fact situations that may arise under the rules, but we think more clarity and accountability is required to guide both the regulated community and the Director. It is also unclear why such substantial deference is granted to AZA programs, with no similar recognition for the federal approvals and licenses held by WIREC. As a USDA class C permit holder, the Center is subject to an Animal and Plant Health Inspection Services (APHIS) inspection twice each year to ensure compliance with federal requirements.

Finally, WIREC is concerned about the fiscal impact of several provisions in the rules that will require significant operational changes or payment of new fees without sufficient time to budget for and achieve compliance with new requirements. As a private non-profit program, WIREC does not have the resources to implement new procedures or modify existing facilities with only one year's notice. WIREC's priority is the health and safety of both the animals in its care, and the staff, volunteers and guests, and the Center's facilities are constantly monitored to ensure that applicable standards are met or exceeded, but a more appropriate transition period is needed for the kinds of changes that would be required under the proposed rules.

Again, we thank you for the opportunity to provide these comments for ODFW staff and the Commission. WIREC would welcome the opportunity for further discussion about changes that could be made to address these concerns.

Sincerely,



Martha O. Pagel

MOP:kdo
Attachment
cc: Dave Siddon



ODFW Wildlife Commissioners:

As I look back on the last ODFW Commission meeting regarding Division 44 Proposed rules one event in particular keeps haunting me over and over again. I had been asking myself, why are these new rules being proposed? What are they trying to accomplish? Dr. Colin Gillin made the statement “we believe wild animals belong in the wild”. I kept waiting to hear about how people’s pet cougars were getting out and mauling people or about how pet raccoons were being released into the wild and competing with native wildlife, and children were getting rabies from pet skunks. But I never heard any other reason except “wild animals belong in the wild”. It could be argued that the majority of the animals that will be affected by these rules really aren’t wild animals at all, but captive raised animals from licensed facilities bred in captivity for many generations. But even putting that aside, it’s quite apparent that if these new rules are passed they will have some very negative emotional and economic ramifications for many Oregon residents and a number of Oregon businesses.

As I walked around West Coast Game Park I tried to picture all of the exhibits that currently contain native wildlife either empty or with non-native species occupying them. The cost to revamp their cages, tattoo animals, spay and neuter, etc. etc. will be crippling for a small business. Many of the animals in those displays are not young animals, so it’s possible that they will spend the money on those well loved displays only to have the animal die within a few years, unable to be replaced with another of their species. It just doesn’t sound like a very good use of money that is already stretched beyond their means. Then I look at their skunk exhibit, which contains more than two skunks, and I wonder how they are going to decide which two get to stay and how to dispose of those who are not chosen. Which bobcat or cougar gets to stay and what will happen to the one that is now considered illegal surplus? Many of these animals have a following of visitors who look forward to seeing them every year when they come. Then to add further insult ODFW has decided that wild animals belong in the wild.....or in an AZA accredited facility. Nevermind that West Coast Game Park has kept cougars, bobcats, bears, raccoons, skunks, etc. for half a century without escapes or injury to anyone. But because they cannot afford accreditation by a private organization, they are no longer qualified to keep these animals. Only large corporations that are supported by Oregon taxpayers and lottery money are qualified to keep these wild animals. Why would the State decide to give economic advantages to businesses which already have so many other advantages over private businesses? Why will the public only be allowed to be educated about native wildlife by two or three businesses in Oregon?

I anticipate the argument that the Wildlife director has the option to make exceptions as he or she pleases. In my opinion that just furthers the opportunity for ODFW to discriminate against businesses they don’t care for and give advantages to the ones they do. I won’t say that would ever happen, but why leave the door open? Why not make our laws equitable so that no one feels like they are being singled out and treated unfairly?

In my opinion, passing this proposal as written inflicts unnecessary damages on small Oregon businesses and citizens and opens the door to discrimination complaints. I feel that requiring a reasonably priced permit for native species so that ODFW can keep track of where they are and how they are being kept is a good idea, but I think going to the expense to inspect facilities that are already inspected by Federal inspectors is a waste of time and tax dollars. I appreciate your consideration.

Molly Schaefer
Salem, OR



9 June, 2016

Re: Proposed Revisions to Section 44

Chair Finley and members of the Commission,

Thank you for the time and effort you are putting in to hear from the community of dedicated animal people.

My name is Lauren Henry and I am the co-owner of Talented Animals. We have been providing the very best animal talent for film and TV in Oregon since 1996. We are USDA licensed and hold ODFW and ODA permits. We have well socialized native-species-animal-actors that have zero impact on local native wildlife. Except for the care Oregonians and audiences have developed for their wild counterparts after they meet them personally and learn about their importance in our ecosystem. These animals were carefully bred and raised with people and enjoy the enriching life of an animal actor and educator. They were not taken from the wild.

The film industry in Oregon is a multi-million-dollar industry employing thousands of people directly and indirectly through the production of films, television shows and commercials.

Oftentimes a production chooses to film in Oregon because they want to share Oregon wilderness and wildlife on screen. By far our most requested animal actors are deer and coyotes. We inform those productions that Oregon is not a state they can complete their project in and they often take their business to other states or Canada.

TV shows like *Grimm*, *The Librarians* and movies like *Wild*, *Twilight* and *Into the Wild* have all utilized native species such as raccoons, skunks, wolves, bears and foxes.

My three main concerns in the latest draft are these:

1. The requirement that the department be notified and grant written permission for animals to be transported will be nearly impossible in our line of work. Film and TV shoots have fluid schedules that depend on weather, location and actor availability. We are often called on a Friday afternoon to come to work with our animal actors on Monday morning. There would be no time to notify the department and get written permission to conduct our job. We are inspected by the USDA, often have American Humane Association on set and a crew of people. We take care that our animals are safe and contained or restrained when working on set. We are also invited by many local animal shelters, civic



9 June, 2016

Re: **Proposed Revisions to Section 44**

Chair Finley and members of the Commission,

My name is Roland Sonnenburg, and I co-own Talented Animals, a company providing trained animals to the film and television industries. Thank you very much for taking the time to listen to testimony again today.

The current draft is a reasonable set of rules for regulating the taking and holding of native wildlife.

However, **none of us keep native wildlife**: on the contrary, we share our lives with animals purposely and selectively bred from captive parents, raised and socialized in our homes, loved as members of our families. They are pets, just as cherished as any collie. Taxonomy alone does not determine whether an animal is wild—a horse can be wild, and protected by one set of laws, or can be a prized Thoroughbred and very different laws apply. Our pets are not wildlife.



Section 44 ought only to address individuals that come from or live in the wild. That would be the right solution and would remedy all other issues. If you will not do that, at the very least make the following 4 changes:

1. **Exempt USDA licensees**—these professionals are *already* required to meet all the safety and care standards addressed in Section 44. Exempting these federally inspected, serious, world-class, private institutions would protect the entertainment and other industries. There is little justification for exempting AZA facilities and not USDA.
2. **Remove the transport rules**—they are unnecessarily restrictive. Nobody will be able to do much with their animals, and if the animals are responsibly owned pets there is little reason a person should not be able to transport them. Nor does “director’s permission” make sense as a regulation—what are the criteria for determining whether or not transport is allowed? I cannot tell a movie producer that I “may” be able to provide animals depending on the mood of the ODFW director.



3. **The burden of proof that an animal is pure and not a hybrid must fall on the accuser.** It is neither fair nor feasible to expect every owner to be able to “prove” whether their animal is a hybrid. Presumptive innocence is a bedrock principle of our social and legal system. Under these revisions, any owner of any dog could be accused of having a pure wolf, and would somehow need to prove otherwise...
4. **Limit inspections to annual.** There cannot be unlimited inspections at the animal owner’s expense.



Every person here today shares your desire to protect the wild animals of Oregon. But please, I implore you not to destroy or degrade the lives of cherished pets that are happily and safely thriving in captivity simply because they happen to bear the same species name as some wild animals with whom they have little else in common.

Thank you very much for your time.



Respectfully,

A handwritten signature in black ink, appearing to read 'Roland Sonnenburg', written in a cursive style.

Roland Sonnenburg
Owner, Talented Animals

June 9, 2016

To: ODFW Commission

Re: Div. 44 - OAR 635-044-0420 / Proposed new rule for Protected wildlife, holding and propagating

Dear Commission members -

I am writing to comment on OAR 635-044-0420, which would allow the public to take wild life out of the wild and hold them for their entire lives. These wild animals, such as chorus frogs and northwestern salamanders are very important components + are prey for many other wild life species.

- Habitat loss + climate change are causing even these common species to become uncommon, and I have found habitats devoid of garter snakes, which are reptiles and reptiles are declining faster than even amphibians due to collection, habitat loss, etc.

- The public often misidentifies species of frogs; including thinking a juvenile Red-legged frog - a protected species, is a chorus frog. This happens often - I know since I work with school groups, teachers, etc. and they consistently tell me of the frogs they captured and they're not what they think they are. There is no ODFW staff capacity to monitor who is collecting what under this proposed new rule - hence why I oppose this for this reason alone.

- If a member of the public wants to hold any wildlife, they should be required to

change to analyze what affects removing those wild animals from the wild would have on a particular wetland, etc. What if a number of people decide to remove frogs from a small urban pond? They could actually be removing all the remaining frogs and no one would know.

obtain a Scientific Taking Permit, which would then allow for some kind of oversight and monitoring of who is holding what wildlife, why, and what kind of conditions these wild animals are being held in.

We are now facing enormous changes in all our ecosystems in Oregon due to climate change. Drier, warmer conditions means amphibians are declining, even those considered common. All of these wildlife are wild no matter how small and deserve full protection. These small wild creatures make up a huge part of the biodiversity of our wildlands in Oregon + need to remain there, not be stuck cruelly in someone's tank for their entire life which can be years!

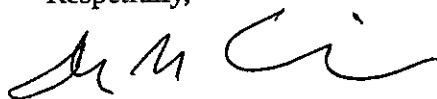
Please, do the right thing by our wildlife and DO NOT adopt this proposed new rule change. Rather, to ensure all of our wildlife is fully protected, have a Rule that requires anyone who wants to hold any wildlife to have a permit in order for ODFW to be able to track what wildlife is being held, why etc. and for ODFW to be able to adequately monitor who wants to hold wildlife, making sure they have a very justifiable reason for doing so. Thank you for the opportunity to comment.

Sincerely, Sue Bielke - Biologist / Board member - Fans of Fanno Creek
11755 SW 114th Pl., Tigard OR 97223

9 June 2016

I, David Cline, live at 861 NE Baldwin Street, Hillsboro, OR 97124, and I endorse the information contained in the letter presented by Theresa Melof.

Respetfully,

A handwritten signature in black ink, appearing to read 'D Cline', written in a cursive style.

David Cline

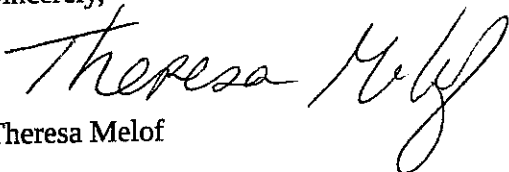
Dear Dr. Gillis and members of the Commission,

I would like to urge you to consider Division 44 changes that protect the rights of skunk owners to continue to have pet skunks, and that also protect the health and safety of pet skunks. I would therefore ask that you not adopt the current draft without adding the following items:

- 1) Please allow transfer of pet skunks as household pets. If you do not, this will lead to poor results for skunks. As with all household pets, there are owners who are not well suited to pet ownership, and those skunks may need to be rehomed in the future. Several of us have skunks that came to us as rescues.
- 2) Please allow skunks to be acquired from and Class A or Class B breeders in any state. It will otherwise be nearly impossible to obtain a pet skunk.
- 3) Please allow for currently owned pet skunks to be grandfathered in, without new paperwork. I ask that this be written to include only skunks obtained after the date the draft is adopted.
- 4) Please simplify the paperwork requirements so that only one authorization for ownership, transfer, and transport of an individual pet skunk is required, rather than multiple authorizations over time or for different purposes.
- 5) Please ease travel requirements. There is no reason for the safety of the owner, skunk, other individuals, or the environment that skunks should not be able to be transported. There should be no need to obtain a letter of authorization from the department in order to travel with a pet.
- 6) Please make it clear that pet skunks may be housed at the skunk owner's residence. As it stands, it appears that skunks may only be kept at AZA or department approved facilities, which would make it very difficult for those of us who only wish to keep a skunk as a pet. Please exempt the owner's home from inspections.
- 7) For pet skunks that are kept indoors, as are the vast majority (and all I have ever been aware of in over 20 years involved with the pet skunk community), please allow normal residential housing to qualify as appropriate and compliant housing. If a house is fit for humans and other pets to inhabit without additional compliance with city, county, state, or federal laws, it is likely also fit for a skunk.
- 8) Please forego the requirement that skunks be marked permanently with a tattoo or device. Many pet owners will choose to do this anyway, but there seems to be no reason to require it. If it is required, please exempt currently owned pet skunks.

Lastly, please consider when revising and finalizing, that these rule changes will have real impacts of the lives of pet skunks and their owners. I ask that you consider what is best for all of these individuals when you are reviewing. Please remember that for us our skunks are beloved pets and are treated with the same love and care as are any dog or cat. I thank you for your consideration.

Sincerely,


Theresa Melof

Melinda E. Surrency, DVM

416 NE Hillwood Drive

Hillsboro, OR. 97124

(503) 329-7446

Thank you for allowing us to speak today.

- After reviewing the proposed revisions, I am in favor of eliminating the need for pet skunks be held on a wildlife holding permit. As our pet skunks are acquired from USDA - approved Rabies- free breeding facilities and living within our homes as pets, they are not functioning as native wildlife and therefore the classification as "wildlife" is not valid. Laws already exist that make it illegal for native skunks to be removed from the wild.
- I am in agreement that pet skunks must be marked permanently with a microchip or tattoo but a clause needs to be included that states this procedure must be deemed safe by the skunk's veterinarian. Some skunks may require sedation for a microchip, and most will certainly require sedation for an ear tattoo. There may be some skunks that are not healthy enough for this procedure and they should not be placed at risk.
- Additionally, please allow skunks to be "exchanged." There are times when a skunk may need to be rehomed due to owner death or other extenuating circumstances. We would like to see these skunks go to a responsible home or rescue who is familiar with their care rather than to an AZA accredited facility who does not want them or be euthanized.
- Please allow skunks to travel with their owners. They are family members and many will travel with them on vacation. Consider requiring a domestic health certificate if there are public health concerns regarding travel.
- Eliminate the need for legally grandfathered skunks to go through paperwork all over again.
- Eliminate the need for a notarized affidavit. Apparently this is not legal.
- Eliminate the need for a State Police officer or department representative to inspect our home without notice or a warrant.

Melinda E. Surrency, DVM

Final ODFW Division 44 Rule Change Thoughts concerning SKUNKS

Let's make this quick, easy, and simple. **Eliminate** the unnecessary. This will make it much better for all of us, skunks included.

1. **Eliminate** the need for any letter or number designation for our licensed breeders, as was the case in the past. This way, if the classifications change in the future, we can still legally get a skunk.
2. **Eliminate** the need for already "legal grandfathered skunks", to go through the paperwork all over again. Why? My letter of authorization from ODFW already states that "this authorization is good for the life of the skunk". Therefore please grandfather our skunks in, with no more hassles.
3. **Eliminate** the need for totally unnecessary involvement of city, county, and federal government. Do you really want to work with them? And do they really want to work with us? And why? Our dwellings have already met local ordinances, building codes, etc.
4. **Eliminate** the need for a notarized affidavit. No legitimate notary can do this, without risks of facing imprisonment, fines, and the loss of job. The owner can face the same charges, which is a Class B Misdemeanor, and can result in up to a year in jail.
5. **Eliminate** the need for the requirement that we need the approval of a wildlife biologist, and department personal before we can have our permit approved.
6. **Eliminate** the need for a State Police Officer or Department Representative to inspect our house, without warrant or notice.
7. **Eliminate** the need for a lip or ear tattoo, and/or implanted radio frequency identification device (RIFD) for elderly skunks (5 and up) or skunks with health issues as verified by a vet, to be grandfathered in and not need these means of ID.
8. **Allow** us to *easily* travel with our skunk.
9. **Allow** us to *easily* transfer our skunk to another holder of our choosing, in the event we are unfortunate enough to not be able to care for him or her anymore

Or, make it even simpler, and do the following things...

1. Place skunks under 056, with no measures taken to negatively impact them in any way
2. Recognize there is a difference between "wild" and "domestics skunks", and remove skunks from the "mustelid" family, of which they have not been a member for at least 20 years.

Thank you,

Melinda Hodge

Commissioners of ODF&W,

As I sit here this morning preparing to leave for our June 9, 2016 meeting with the ODF&W, I view a posting of a stakeholders letter to a fellow skunk owner.

I am appalled!!! I truly hoped that my faith in your department and the integrity of your employee would prevail. I have strong doubts at this time. The only way to resolve this concern is to highly question his integrity. To reject his statements. This stakeholders letter dated May 31, 2016 and mailed June 3, 2016 shows disregard for those involved. I view it as deceitful and morally wrong.

I or Mike Kennedy have not received a stakeholders letter as of 6/9/16.

With the utmost respect for you as commissioners I am questioning the credibility of Dr. Colin Gillin, Wildlife Holding Advisory Group, State Wildlife Veterinarian. I have questions and concerns that this gentleman has little or no understanding of domestic skunks.

- 1) As a veterinarian he should know the correct species he is addressing. Skunks are NOT classified as Mustelides. They are classified as Mephitidae. This was addressed by myself and others at the March meeting. It was also included in the file I presented to the commission.
- 2) His timeline to spay and neutering a skunk is not acceptable.
- 3) I'm concerned he knows nothing or very little about breeders and their classifications.
- 4) It was obvious at the March meeting he was ill prepared and showed lack of responsibility in notifying owners.

There has been other issues that have risen about how much knowledge this person has on domestic skunks. We as domestic skunk owners offered to sit down and talk with the commission and Mr. Gillin about issues. We have documentation and statements from professionals. But our offer was ignored.

Please, I implore you to reconsider all information that has been offered to you, by your employee. To meet with a veterinarian who is knowledgeable about all aspects of domesticated skunks, Melinda Surrency.

Please restore the faith I and others had in your department. Dispose of 44! This issue should have never been presented in the first place.

Marilyn Van Dyke

I'd like to thank you again for giving us a chance to voice our concerns on Revision 44. However there are some issues that we are addressing that we hope you will rephrase or even better yet, omit.

Some of us were disappointed that skunks are still being classified as Mustelids when in fact they are not. The correct scientific classification is Mephitidae. It was mentioned the last time I spoke and even was written in the red file folder I had submitted. I was hoping your biologist would have changed to the correct classification.

I am here to address the transportation clause in 44. I am hoping that you discard this clause during your voting.

Under your clause we will only be permitted to transport our skunks to a veterinarian. There are circumstances where transportation is important other than to a vet.

One is a woman who could not be here today due to her mother dying of cancer. She is concerned that she will be unable to transport her skunk from her home to her mother's, hundreds of miles away. This last year she took all the time she could to be by her mother's side. Being able to bring her pet with her has lessen the burden on finding care and it also has been a huge comfort to her. Her only other alternatives are to 1) Board Couper, which leaves her a financial hardship since she has already given up weeks of work without pay. 2) Have neighbors stop by for 5 minutes to feed her.....then leave. What a depressing way to live waiting for someone to come feed you when you could be with your family. 3) To go ahead and transport Couper to her dying mother's home and hope not to be caught. She suffers from anxiety and this would only compact it.

What reasoning is there to have this transportation clause written into 44?

We acquired Bella to be our companion, just as someone who acquires a puppy. Rather than leaving Bella at home while we go camping at the coast, she travels with us. We have spent hundreds of dollars equipping our motorhome for her benefit and safety. A plexi-glass divider is being installed to keep her from the driver's area of the RV. Our only other option is to leave Bella at home for a week at a time and depend on family members or neighbors to stop by and feed her. These people will be unable to stay and interact with her, only to feed her and leave. It's devastating to think of leaving a pet alone without socialization for 23 hours and 55 minutes a day. Skunks are very sensitive animals. If they are deprived of socialization from ones they depend on they become distraught. They feel abandoned and recouping takes considerate amount of time. One other option is for us never to have a vacation that lasts more than 24 hours.

While traveling with us Bella remains in the motorhome.

Whenever Bella is traveling with us we carry her paperwork. This is a complete file from when she was born. Breeder, USDA, Veterinarian papers including all vaccinations. If we were ever questioned about her we could submit her paperwork. If we are to have a microchip inserted this will be another piece of information in her file. No problem!

With this clause I am even unable to go for an afternoon to visit my daughter, with Bella, 7 miles away. Bella doesn't go everywhere with us but at times "getting out of the house" is a treat.

I don't see any benefit to have transportation restrictions and I'm hoping you don't either. Please omit this clause from 44.

Thank you,

Marilyn Van Dyke

Members of the ODFW Commission,

On March 18, 2016, I testified before you regarding the proposed Division 44 rules. At the conclusion of that meeting, you stated that the issue had not yet been decided, and encouraged participants to provide additional input. I took this message to heart, and used the time productively. I did a considerable amount of investigation on various aspects of the issue. I then consulted with ODFW (Dr. Colin Gillin), who helped me understand the subject from the Department's perspective. From this, I gave both sides of the matter some thought, and came up with a suggested alternative to the proposed regulations. These are all listed in Parts 1-4 following this letter.

Before you get to that, I would like to say a few words. During this process, I talked to a lot of people. These were a diverse group, and included pet owners, field herpers, professional herpetologists, teachers, natural resource educators, students at all levels, parents, and members of the general public. In general, there is a lot of frustration with the Department. Most stakeholders feel like the Department just does whatever it wants, and they have literally no input in any process. In truth, my experience with the Division 44 regulations tends to confirm this view. With respect to amphibians and reptiles, a number of perfectly valid points were raised during the initial round of public input, and absolutely none of these resulted in any change to the final draft – even so much as including language clarifying the legality of field herping.

An example of this are the procedures used to list species as Protected: the proposed regulations are not based on any data and lack scientific validity. I have seen no data relating to take of amphibians or reptiles in Oregon, nor the effect of such take on populations. In fact, the regulations make no use of any amphibian or reptile data at all. The ORBIC list is used as a surrogate for such data, and is the sole means of assigning status to species. The NatureServe ranking system, on which ORBIC is based, assigns a value to a given taxon as the composite score of several factors. But if you examine this process, you will see that the factors considered are not quantitative or even standardized. (See: [http://explorer.natureserve.org/eorankguide.htm#Hypothetical examples](http://explorer.natureserve.org/eorankguide.htm#Hypothetical%20examples)). It is literally based upon the value judgements of taxon experts. This is fine, as long as the experts really are experts – but, for a lot of species, the contributing 'experts' are not. The result is a system that is ultimately influenced by the detection ability of its contributors. Even this would be fine, if taxa were evenly represented by contributors, but the nature of the process makes it such that certain groups of organisms (*e.g.*, those that are hard to find and for which little funding is available) are continually under-represented.

The Department makes the argument that ORBIC is the only such ranking system available, which justifies its use. While the former may be true, I argue that it doesn't justify its use as the *only* source. There are a lot of amphibian and reptile data available that could be used to supplement the ORBIC list, and the Department already has (or has access to) the majority of them, yet they were not used. This absence of data was pointed out repeatedly by respondents (see public correspondence), but was apparently ignored.

Now, let's put this in context: For what other group of animals (which have an interested constituency) would it be acceptable to create take regulations without data? Salmon? Mule deer? What about the fact that none of the affected constituency (herpers, teachers, herpetologists, pet keepers, *etc.*) was included in the working group? (I found out that the one 'pet industry' representative resigned after several group meetings due to concerns over the process.) Do you think the NSIA would approve of fishing regulations set by non-fisheries

Part 1. Background

To evaluate the potential effects of the proposed Division 44 regulations and the viability of other options, I conducted some background research. A brief summary of this investigation and the results are as follows (contact me for more details).

Methods

1. I examined regulations pertaining to amphibians and reptiles for most states. I made an attempt to examine the history of such regulations and the reasons for their adoption. I examined available information on the effectiveness of such regulations, as well as their reception by the public. Sources of information for the latter included legal cases, take data (where available), forum discussions, and interviews with individuals affected by a given set of regulations. (These included field herpers, pet keepers, reptile breeders, and biologists.) Among other topics, I questioned individuals on the efficacy of state regulations, the rate of illicit activity, and the general relationship with the regulating department.
2. I looked for cases involving illegal take, possession, and/or holding of amphibians and reptiles in Oregon and other states. For each incident, I examined a number of variables, including the actions for which the individual(s) were cited, the animal species involved, the method of acquisition, the intent of the individual(s) involved, the disposition of the animals, the eventual outcome of the case, and whatever information I could gather on public sentiment following the incident.
3. Under condition of anonymity, I interviewed 41 individuals with the potential to be affected by the proposed Division 44 OARs (regarding amphibians and reptiles only). These included professional herpetologists, recreational "field herpers", K-12 teachers, university faculty and associates, staff of natural resource and wildlife agencies, natural resource and outdoor science educators, landowners, pet owners, and reptile breeders.

Results

1. As might be expected, state regulations vary considerably; however, most states have multiple classifications of native herpetofauna ranging from endangered (protected) to nonprotected. Efficacy of regulations also appear to vary considerably. Several states with the "strictest" rules had the lowest compliance. For example, in certain states where all native wildlife are protected from take and field herping is illegal, there are large numbers of field herpers and varying levels of collection and holding of native amphibian and reptile species. In other states, where take of some species is allowed (with and without permits), compliance is generally high. Investigation of some states allowing captive propagation of reptiles suggested high compliance with regulations. Some states have large and active groups of herpers who voluntarily contribute distribution data to the regulating department, among other things.
2. With respect to amphibian and reptile violations, cases involving take (in field) were fairly clear-cut if a license/permit was required for take. Cases involving confiscation (seizure) of animals were often contested and frequently overturned, especially if

consulted as to the nature of the animal's health and the nature of the housing (as is the practice in other issues involving amphibians and reptiles).

C. Propagation (OAR 635-044-0470, 635-044-0480)

- a. Remove proposed restriction on captive propagation of amphibians and reptiles for personal use. Instead, address this issue via limit on number of animals taken (*see* A. Take) and prohibition on release of animals held in captivity. Retain proposed (48-hour) rule on release of animals held in captivity (OAR 635-044-0480, (3)).
- b. Remove limit on number of captive-bred amphibians and reptiles that can be held. Proof of origin is the responsibility of the owner and can include receipts of legal purchase, morphology (*i.e.*, morphologically aberrant individuals), and other types of documentation (contact me for details).
- c. It is currently illegal to sell native Oregon amphibians and reptiles. This statute should be retained for animals taken from the wild, regardless of legality.
- d. Recognizing the demand for amphibians and reptiles and that captive breeding is a very effective means of reducing take of wild animals (especially reptiles), ODFW may consider creating Propagation Permit for individuals interested in captive breeding of selected native amphibians and reptiles. (Note that some native species are already being captive bred – *see* my previous letter). An amphibian or reptile propagation permit would be similar to that existing or proposed for other species (*e.g.*, OAR 635-044-0540).
- e. Permits for the captive propagation of native amphibians and reptiles are issued by other states. They generally include the following conditions:
 - i. Inspection and licensing of facilities in which animals are housed, based on standards developed by a qualified herpetologist or similar professional.
 - ii. Inspection of animals by a qualified veterinarian.
 - iii. Permit holders would be required to submit annual inventories of animals produced and sold.
 - iv. Recipients of captive-bred animals would be required to obtain documentation or other identification (*e.g.*, microchip/PIT tag) linking animals to breeder.

Part 3. Proposed solution

Taking into account all the factors previously discussed, I propose the following potential solution:

1. Table adoption of the proposed Division 44 regulations relating to amphibians and reptiles.
2. Revise the proposed regulations to address take, rather than holding, of amphibians and reptiles. The available evidence suggests that the former is much more enforceable and will be better received; hence, it has a greater potential for success. Part 4 of this letter has some *suggestions* for such a take permit (a “Herp Stamp”). It goes without saying (but I will anyway) that the success of any program depends on how it is conducted and presented to the public. Therefore, I strongly recommend that the adoption of any regulations not be done immediately, but should be based on input from the herping, reptile keeping, and educator community, which was completely absent from the original working group.
3. Develop an amphibian and reptile conservation and management program centered around the adoption of such a take permit. This program would engage the educational and herping community and encourage them to work *with* the agency and be a part of conservation and management efforts. These people have valuable skills and knowledge and could contribute a great deal to such efforts as research, education, habitat acquisition, and conservation. I have a number of suggestions for ways this could be accomplished. For example, the Department could maintain a list of approved “master herpers”, skilled in field techniques, which would be available to contribute distribution data or assist staff members with research projects as well as basic needs (such as identification of uncommon species). There are a lot of opportunities to build a productive education, research, and conservation program.

Part 4. Recommendations for regulating take, holding, and propagation of native amphibians and reptiles

The following are recommendations for developing a take permit for native amphibians and reptiles (a “Herp Stamp”). They are based on the most successful features of other states’ management programs.

- A. Take (OAR 635-044-0010 (20))
 - a. Create a “Herp Stamp”. A Herp Stamp would be a stamp (like the federal “Duck Stamp”) which, when affixed to a state fishing license, would allow the holder to take a designated number of selected species per year. (Alternatively, a “herp validation” could be printed on the existing plastic license – a cheaper but much less classy alternative.)

- i. A Herp Stamp would be required for take of allowed amphibians and reptiles pursuant to regulations. It would allow the holder to take a set number of individuals of each species per year. It would also be required for some field herping (see part v, below).
- ii. A Herp Stamp would not be required for teachers or educators employed by accredited K-12 institutions. It would also not be required for non-formal educators (proof of employment or volunteer education activity may be required).
- iii. A Herp Stamp would not be required for children less than 14 years of age, individuals over 65 years of age, and landowners herping on their own property. It would not be required for parents herping with young children (children less than 14 years of age) if animals were not being collected or removed from their location.
- iv. A Herp Stamp would not be required for individuals briefly handling animals for the purposes of removing them from harm (*e.g.*, moving them off the road). It would be required for individuals engaged in road-hunting or collecting from the road, as evidenced by possession of collecting equipment while moving or otherwise observing animals on the road.
- v. A Herp Stamp would not allow the holder to take species listed as Protected (OAR 635-044-0430).
- vi. A Herp Stamp would not be required by individuals "field herping" if the individuals were simply observing animals *in situ*, without disturbance. It would be required by individuals removing amphibians or reptiles from the location at which they were found. In other words, it would be required for any field herping activity in which amphibians and reptiles were caught or even temporarily possessed, even if not retained or removed from the field.
- vii. Recognizing the limitations of the ORBIC database for amphibians and reptiles, amphibian and reptile species allowed for take (635-044-0480) would not be based solely on the ORBIC system, but will be based on a more accurate, updated ranking system which uses data from a number of existing sources (some of which the Department already has). The ORBIC database will be included in this system but will not be the only data source.
- viii. The initial reclassification of species as Protected (635-044-0430) based solely on ORBIC listing should be postponed pending a more accurate evaluation of their status (see part xi, below).
- ix. A voluntary reporting program should be instituted for animals taken under a Herp Stamp. This would greatly improve the Department's knowledge of amphibian and reptile distribution within the state and provide valuable information on the actual importance of individual take on these populations (currently, there is *no* information). If a reporting program is implemented, it needs to be carefully considered (*e.g.*, not mandatory) and promoted if the information thus obtained is to be of any value. People generally dislike reporting programs, and compliance is an

issue. I think I can get around this if the Herp Stamp is properly designed and implemented. Contact me if you are interested.

- x. The Herp Stamp could be purchased by any individual interested in supporting amphibian and reptile conservation within the state of Oregon.
- xi. Funds derived from sale of the Herp Stamp could only be used for the following: Amphibian and reptile research and conservation, including habitat acquisition. They cannot be used outside of the non-game program, and cannot be used for administrative costs or salary, although they could be used as “in-kind” match to secure funds for a salaried position from other sources. The first projects that should be funded via sale of the Herp Stamp are: 1) identifying and ranking the actual threats to persistence of Oregon herpetofauna; and 2) development of a more accurate inventory and monitoring system than ORBIC for Oregon herpetofauna.

B. Holding (OAR 635-044-0440, 635-044-0450)

- a. Remove proposed Holding Permit (OAR 635-044-0440, 635-044-0450, 635-044-0480) for reptiles and amphibians. Available evidence suggests that it will be extremely unpopular and will promote illicit collection, holding, and release of animals.
- b. Remove limit on number of animals that can be held, as enforcement is dependent on compliance with holding permit requirements.
- c. Replace proposed Holding Permit with “Herp Stamp”. Herp Stamp would allow the holder to take a designated number of selected species per year (*see* A. Take).
- d. A Herp Stamp is required as long as individuals of legally taken species are in possession (*i.e.*, it is unlawful to possess legally taken native species without a Herp Stamp). In other words, the Herp Stamp serves as an annually renewed Holding Permit for the life of the animal.
- e. The number of legally taken wild animals that can be held will be determined by the number of Herp Stamps that have been held by an individual (*e.g.*, if 5 are allowed per year, and a person has 15 individuals in possession, they will have to have proof of purchase of Herp Stamps for 3 consecutive years). This is relatively easy to do since license and tag sales are tracked online.
- f. A Herp Stamp would not be required to own legally acquired, captive-bred animals of species not listed as Protected (OAR 635-044-0430).
- g. There will be no limit on the number of individuals of legally acquired, captive-bred animals of species not listed as Protected (OAR 635-044-0430).
- h. Proof of legal acquisition and captive breeding is the responsibility of the owner of any animals.
- i. Remove Department regulations on “acceptable” or “minimum standards” for housing of amphibians and reptiles (OAR 635-044, Exhibit 1). The expertise in best housing and care lies outside the Department, and without developing extremely detailed care requirements, this is only opening the Department up to litigation. Instead, label the housing requirements “suggested”, and require that animals be kept in accordance with the “best standards of the industry (or field)”. In cases of potential wrongdoing, experts outside of the Department can be

confiscation made in error. Causes of error included mistakes in identification by enforcement personnel and misinterpretation of rules. Subsequent litigation occurred in a number of cases. Public sentiment with respect to the enforcing agency and its role was varied initially but often became negative depending on disposition of seized animals.

3. The results of the interview were noteworthy: of 41 respondents, 78% (32 people) considered the requirements for a holding permit prohibitively strict, and said that they would not even attempt to apply for one. Some of these people possessed animals which would be affected by the proposed regulations. Several of these said that they planned to keep their pets anyway, and some said they would release their pets if the rules were adopted, but most were "undecided". The remaining 9 people said that they might consider applying for a holding permit, but they still thought that the application process and requirements were too strict, and only 4 (of the 9 people) thought they would have a chance at successfully securing a permit. The primary complaints regarding the proposed holding permit requirements were: 1) requirement of home inspection, 2) requirement of annual renewal, 3) requirement of separate permit for each species.

The primary complaints regarding the proposed Division 44 rules in general (these were unsolicited by my survey but I include them anyway) were as follows: 1) unfair burden on teachers and educators, depriving children of animals and nature in education, 2) the basis for reclassification of species as Protected, and 3) unfair limit on number of animals and prohibition on breeding captives.

Part 2. Summary of problem

The results of the above investigation largely agree with the public correspondence received to date and with the problems I outlined in my initial evaluation. In short, the evidence suggests that the proposed Division 44 rules (as they pertain to amphibians and reptiles) will be poorly received and largely ignored. Furthermore, unless one plans on conducting surprise home inspections, they will be largely unenforceable due to a number of factors, including the lack of staff expertise relating to amphibians and reptiles.

On 06 June 2016, I had a meeting with Dr. Colin Gillin, in which I presented him with these results. At that meeting, he explained the financial situation of the Department and the need for funding to support management of nongame species, among other things. A quick calculation suggests that issuing holding permits (as proposed) for reptiles and amphibians is unlikely to be very profitable:

Assuming 1,000 applicants are all approved for permits for a species apiece, and each pays a \$25 permit fee AND a \$150 inspection fee (\$175 total), the gross income to the Department would be $\$175(1,000) = \$175,000$. To the uninitiated, this seems like a lot, but not when you calculate the cost of staff time to approve permits and perform inspections. In addition, the cost of a single litigated seizure case (or permit denial) can rapidly exceed that amount.

Therefore, as I understand it, the Department has a problem: how to generate sufficient funds to administer the regulations and hope to have money left for effective amphibian and reptile conservation and management without thoroughly irritating the very people they need to be willing participants in such efforts.

Part 5. Other recommended changes to proposed Division 44 OARs

In light of the opposition to the prohibition of “federally listed” species in Oregon (see my letter from 03 March 2016 and others’ public correspondence), I recommend changing the following:

Field herping

OAR 635-044-0430: Protected Wildlife: (1): Recommend including language specifically addressing legality of field herping (looking for, observing, photographing animals in natural habitat). This should be done for purposes of clarity with respect to law enforcement. If “Herp Stamp” suggestion is implemented, this section will need to be updated to reflect permissible and nonpermissible activities.

Holding

OAR 635-044-0430: Protected Wildlife: (1)(a): Recommend change “and federally listed threatened and endangered species” to “*unlawfully acquired* federally listed threatened and endangered species” to accommodate animals permissible under Federal law (*e.g.*, captive-bred, legally acquired, and permitted animals). Also, “federally listed” needs to be defined to make it clear and unambiguous. The implication seems to be inclusive of species that are ESA-listed, but there are many lists other than the ESA.

biologists? Or would the OHA be likely to appreciate elk seasons set by PETA? Then why should those involved with amphibians and reptiles accept rules drafted without any of their input?

Don't get me wrong: I am not against protecting Oregon's amphibians and reptiles. Quite the opposite: I have devoted my life to the study and conservation of Oregon's amphibians and reptiles. In 2007, I proposed to (former) ODFW director Roy Elicker that Oregon's amphibians and reptiles needed protection and management. But the present attempt is not a good way to do it.

Perhaps the best way to look at this is in terms of a risk analysis. The available evidence suggests that these regulations will be poorly received and are likely to increase unreported take, holding, and release of animals. They will negatively impact science education and further erode the relationship between the Department and a diverse group of constituents. Enforcement of these rules literally depends on public cooperation, which in turn requires faith in the Department and its capacity to do the right thing. Depending on how this process is carried out, the Department will make either a lot of conservation allies or a lot of enemies – and it's hard to unmake enemies.

Knowing we have this much to lose, what have we to gain? Why is it so important to pass these rules right now, as is, without putting a little more work into it? I should think that, given the potential for negative consequences, the Department would want to get it right the first time. Like the old saying goes, "an ounce of prevention is worth a pound of cure". How many times have you looked back at a situation and thought, "Man, I wish I handled *that* differently"? Well, here's your chance.

Thank you for your time and consideration of my suggestions. I really do appreciate it.

Sincerely,

Chris Rombough

07 June 2016

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