



AGENDA ITEM SUMMARY

BACKGROUND

On January 15, 2021, the Oregon Department of Fish and Wildlife (Department) received a document entitled “Petition to Initiate Rulemaking to Amend OAR 635-056-0050 to Add Mink to the Prohibited Species List” along with additional supporting materials from The Center for Biological Diversity (Attachment 2). This petition requested the Commission adopt amendments to current rules to include the American mink (*Mustela vison* which was recently renamed *Neovison vison*) and European mink (*Mustela lutreola*) on the list of prohibited species included as part of Division 056 (Importation, Possession, Confinement, Transportation, and Sale of Nonnative Wildlife). The submitted petition qualifies as a valid petition under the Administrative Procedures Act (APA) because it contains the statements and comments required by OAR 137-001-0070(1) and (2), and staff now asks the Commission to decide whether to accept or deny the petition. Under the State APA, within 90 days after the date of submission of a petition, which is April 15, 2021 in this instance, the Commission is required to either deny the petition in writing or initiate rulemaking proceedings. Regardless, no rulemaking will occur as part of this agenda item. If a rulemaking process is initiated, modifications to OARs may occur as a product of the process at a later date.

PUBLIC INVOLVEMENT

At this time, the Commission requests public comment on the petition’s proposed amended rule generally and specifically on whether options exist for achieving this regulation’s substantive goals in a way that reduces negative economic impact on businesses.

Members of the public have the opportunity to view the petition, the supporting materials submitted with the petition, as well as this summary on the Department website. A press release has also been issued prior to the Commission meeting to inform the public on a pending petition and the nature of the petitioner’s proposed rules.

The Department has received comments in support and opposition to the petition and the rule it addresses (Attachment 3).

ISSUE 1

Petition to initiate rulemaking to amend OAR 635-056-0050 to include American and European mink on the list of Prohibited Species.

ANALYSIS

In accordance with ORS 183.390(3), the following factors must be considered by the Commission when determining whether to initiate rulemaking or to deny the petition:

- the continued need for the rule;
- the nature of complaints or comments received concerning the rule from the public;
- the complexity of the rule;
- the extent to which the rule overlaps, duplicates or conflicts with other state rules or federal regulations and, to the extent feasible, with local government regulations;
- the degree to which technology, economic conditions or other factors have changed in the subject area affected by the rule; and
- the statutory citation or legal basis for the rule.

For the Commission's consideration, Staff provides the following information related to each of these six factors:

1. The continued need for the existing rule

The petition specifically refers to including the American mink (*Mustela vison* recently renamed to *Neovison vison*) and European mink (*Mustela lutreola*) to the list of prohibited species in OAR 635-056-0050. The purpose of Division 56 is to protect Oregon's native wildlife by regulating human actions involving nonnative wildlife. The American mink is a native mustelid species, classified as a furbearer or furbearing animal, and the OARs for protection of the species are in Division 44. The American mink is not included as a species covered by various permits to allow that they may be captured from the wild and/or held with the very direct exception in OAR 635-044-0440(12) that "mink (*Mustela vison*) may be held by a commercial fur farm under authority of the Oregon Department of Agriculture (ORS 596.010(3); 609.125; 596.020(2))".

The European mink, also known as the Russian mink and Eurasian mink, is a mustelid native to Europe. The European mink is classified as Critically Endangered on the International Union for Conservation of Nature (IUCN) Red List of Threatened Species. Once widespread across Europe, the wild European mink population has undergone a severe decline and now occupies less than 20% of its former range and is considered one of the most threatened mammals in Europe.

OAR 635-056-0040 does not allow issuance of a permit for importation or possession of live nonnative wildlife that have not yet been classified, the same as if they were on the prohibited species list; and therefore, European mink are currently considered the same as a prohibited species. Furthermore, the Oregon Department of Agriculture (ODA) definition of livestock (ORS 596.010(3)) includes domesticated fur-bearing animals and such animals are not within the purview of the state game laws (ORS 596.020(2)). The Department has never received a request to classify European mink as noncontrolled and the nonnative mink is not included as a controlled species.

2. The nature of complaints or comments received concerning the rule from the public

To date, the Department has received comments in support and opposition to the petition and the rule it addresses (Attachment 3).

Additional comments are also expected to be forthcoming. Prior to the Commission meeting on March 19, 2021, the Department will post this information and advertise that the Commission requests public comment on the petition's proposed amended rule generally, and specifically on whether options exist for achieving this regulation's substantive goals in a way that reduces negative economic impact on businesses. Members of the public will also be able to testify at the Commission meeting.

3. The complexity of the rule

The amendments presented by the petitioner is not complex and does request to simply add the American mink (*Neovison vison*) and European mink (*Mustela lutreola*) to the list of prohibited species in OAR 635-056-0050. The complexity for the petitioner is that the authority for regulating domesticated furbearing animals is statutorily directed to the ODA. Petitioner asserts that American mink, when held as livestock under ODA regulations are "nonnative". The definitions for both "native" and "nonnative" in OAR 635-056-0010 reflect the American mink as native wildlife in the state of Oregon and those rule definitions were not proposed for amendment by the petitioner. The consideration for that change would also have no impact to the fur farming industry which is regulated by ODA.

4. The extent to which the rule overlaps, duplicates or conflicts with other state or federal regulations and, to the extent feasible, with local government regulations

The proposed amendments to Department OARs outlined by the petitioner is entirely to provide an oversight to mink being bred and maintained commercially or otherwise, within pens, cages and hutches, which is under the statutory authority of ODA. There are also current rules developed for enactment of ORS 498.002 (Wildlife as state property; taking, angling, hunting or trapping in violation of wildlife law or rules prohibited.) which regulate the capture and/or holding of native American mink from the wild.

5. The degree to which technology, economic conditions or other factors have changed in the subject area affected by the rule

The petition describes recent news of documented SARS-CoV-2 cases (the virus that causes COVID-19) in domesticated mink at commercial fur farms and concerns of potential zoonotic transmission. The affected facility in Oregon was placed under quarantine (no animal or animal products could leave the farm) on November 24, 2020, after ten mink samples tested positive for the virus. ODA and OHA coordinated efforts to conduct testing of the mink at the facility and trap/test protocol immediately outside the commercial fur farm facility. Wildlife biologists with USDA Wildlife Services, under the Department's direction, captured and tested more than a dozen animals, including ten opossums, three cats, two skunks, and three mink. All the animals tested negative except for two mink captured in December. Based on the location of capture, condition of the mink, and necropsy findings, USDA Wildlife Services, ODA and the Department believe all three captured mink had very recently escaped confinement at the affected farm. During the quarantine, ODA conducted five rounds of SARS-CoV-2 testing at the farm. The USDA National Veterinary Services Laboratories confirmed the last two rounds of samples, showed the virus no longer detectable among the 62 samples collected. Per USDA and Centers for Disease Control and Prevention guidance, ODA required two consecutive rounds of

Petition to Add Mink to List of Prohibited Species in OAR Chapter 635, Division 056

negative testing for SARS-CoV-2 before lifting the farm quarantine. On February 11, the ODA lifted the quarantine on the Oregon mink farm previously affected by SARS-CoV-2. The Oregon Health Authority also asked those working on the farm to self-isolate and provided training on enhanced Personal Protective Equipment (PPE). Health officials believed the mink contracted the virus from caretakers.

The communication and coordinated efforts between the veterinarian staff in ODA, USDA Wildlife Services, and the Department as well as OHA are a key component to government agencies being prepared to effectively address zoonotic disease issues.

6. The statutory citation or legal basis of the rule

The legal basis for the current rules in Division 56 have not changed, is still relevant, and amendments to the rule were most recently adopted in December 2017.

Conclusion of factors considered when determining whether to initiate rulemaking or to deny the petition:

Most of the recent interest in mink in Oregon has been generated by SARS-CoV-2 infections at commercial fur farms throughout the United States and in Europe. The commercial fur farming industry in Oregon is statutorily regulated by the ODA.

The primary goal of the petition is to place the American and European mink on the list of prohibited species in Division 56 which specifically intends to regulate human actions involving nonnative wildlife. The American mink is a native species. The European mink, although nonnative, is tightly regulated by inclusion on the ICUN Red List of Threatened Species, and is not classified by rule in Oregon which makes it the same as a prohibited nonnative species for the purposes of importation or possession. Current Division 44 rules prohibit holding of native mink.

There is insufficient, substantive content to support the petition's suggestion that Department OARs can affect the desired changes discussed by the petitioner regarding the commercial fur farm activities. As such, staff recommends the Commission deny the petition. Staff recognizes and shares the concern that zoonotic diseases can potentially have with Oregon's wildlife. The Department has continually been modifying wildlife handling guidelines for our staff and public entities permitted to handle wildlife such as wildlife rehabilitators and wildlife control operators. The Department is also very fortunate to have a professional and nationally recognized leader in zoonotic diseases as our state veterinarian.

OPTIONS

1. Deny the petition.
2. Accept the petition and initiate rulemaking proceedings on the concept proposed by the Petitioner.

STAFF RECOMMENDATION

Option 1.

DRAFT MOTION:

I move to deny the petition and direct staff to notify the petitioner in writing.