



## AGENDA ITEM SUMMARY

### BACKGROUND

On October 3, 2022, the Oregon Department of Fish and Wildlife (department) received a petition entitled “Petition to promulgate rule to prohibit coyote killing contests in Oregon” from fifteen non-government organizations (Attachment 2). This petition requested that the Oregon Fish and Wildlife Commission (Commission) begin a rulemaking process to prohibit coyote killing contests in Oregon. The submitted petition qualifies as a valid petition under the Administrative Procedures Act (APA) because it contains the statements and comments required by Oregon Administrative Rule (OAR) 137-001-0070(1). Under the APA, within 90 days after the date of submission of a petition, which is January 1, 2023 in this instance, the Commission is required to either deny the petition in writing or initiate rulemaking proceedings. Regardless, no adoption or amendment of administrative rule will occur as part of this agenda item. If a rulemaking process is initiated, the department would conduct a public rulemaking process and bring any proposed modifications to OARs to the Commission for consideration in a public meeting.

### PUBLIC INVOLVEMENT

The department provided initial notification on this agenda item as part of the future proposed topics listed on the October Commission meeting agenda. A press release was issued prior to the Commission meeting to inform the public on a pending petition and the nature of the petitioners’ proposed rules. At this time, the Commission requests public comment on the petition’s request that the Commission initiate rulemaking to prohibit coyote killing contests. Members of the public have the opportunity to view the petition as well as this summary on the department website.

Comments received by the department about the petition are in Attachment 3.

### ISSUE

Petition to create new administrative rule to prohibit coyote killing contests in Oregon.

## ANALYSIS

Per ORS 183.390 there are no explicit factors or basis the Commission must consider when determining whether to initiate rulemaking or to deny the petition.

With respect to regulatory authority, coyotes are an Oregon wildlife species that, depending on the situation, are classified as a predatory animal (ORS 610.002) or an unprotected mammal (OAR 635-050-0050(13)). The predatory animal definition includes coyotes and other animals that are or may be destructive to agricultural crops, products and activities. Per ORS 610.105, “Any person owning, leasing, occupying, possessing or having charge of or dominion over any land, place, building, structure, wharf, pier or dock which is infested with predatory animals, as soon as their presence comes to the knowledge of the person, may, or the agent of the person may, proceed immediately and continue in good faith to control them by poisoning, trapping or other appropriate and effective means.” In all other situations, coyotes are classified as unprotected mammals and subject to department management. Another statute specific to predatory animals is ORS 610.060 that states “nothing in the wildlife laws is intended to deny the right of any person to control predatory animals as provided in ORS 610.105.”

Regarding the Commission’s authority and predatory animals, ORS 496.162(1) and (2) describe the Commission’s authority to prescribe the times, places, manner and amounts of wildlife species that people may take, but ORS 496.162(3) then limits the scope of authority by stating that notwithstanding ORS 496.162(1) and (2), the Commission “shall not prescribe limitations on the times, places or amounts for the taking of predatory animals.”

From an authority perspective, the department has determined that the Commission likely has the authority to adopt rules regarding the petition’s intent to prohibit coyote killing contests in Oregon as a manner of take. However, this is assuming the rules do not impede upon predatory animal control activities authorized in statute (ORS 610.105). Developing rules that do not impede this statute may be challenging and would not likely result in a complete elimination of coyote killing contests. Additionally, the APA does not specify a timeframe for completing rulemaking processes initiated through an accepted petition. If the petition is accepted, the staffing and timeliness impact on other wildlife management planning efforts anticipated in the next year will need to be considered when scheduling rulemaking related to the petition.

## OPTIONS

1. Deny the petition to promulgate rules to prohibit coyote killing contests in Oregon.
2. Accept the petition to prohibit coyote killing contests in Oregon and initiate rulemaking proceedings on the concept proposed by the Petitioners.

## **STAFF RECOMMENDATION**

The consideration for the Commission is whether to direct staff to undertake a public rulemaking process to prohibit coyote killing contests in Oregon. Staff have outlined the challenge in crafting rules that do not impede statutorily granted opportunities for predatory animal control activities, the likelihood that rules would not result in a complete elimination of coyote contests, and the impact of a rulemaking effort on other wildlife management planning efforts over the next year.

### **DRAFT MOTION:**

I move to deny the petition to promulgate rules to prohibit coyote killing contests in Oregon.  
or

I move to accept the petition and initiate rulemaking proceedings on the concept to prohibit coyote killing contests in Oregon proposed by the Petitioners.