



AGENDA ITEM SUMMARY

BACKGROUND

In October 2022, the Oregon Department of Fish and Wildlife (department) received a petition to promulgate rules prohibiting coyote killing contests in Oregon. The topic was discussed, and public correspondence and testimony were accepted into the record. Related concepts have also been introduced in previous legislative sessions. The Commission denied the petition at their December 2022 meeting. As part of the motion, the Commission directed staff to draft administrative rules, consistent with the Commission’s authority, for consideration of addressing the general concerns with taking certain wildlife as part of a contest. The department drafted the proposed rule changes in response to the Commission’s request.

PUBLIC INVOLVEMENT

The department provided initial notification to interested public on July 21, 2023 through the Notice of Proposed Rulemaking Hearing on this agenda item (Attachment 2). A press release was issued prior to the Commission meeting to inform the public on consideration of rulemaking and request for public comment on the proposal. Members of the public have the opportunity to view the exhibit materials on the department website.

Comments received by the department about the proposed rule amendments are in Attachment 3, and members of the public are invited to provide testimony at the Commission meeting.

In response to comments received and discussions with stakeholders after the public notice, the department made several updates to the proposed rule amendment language. The terminology was changed from “derby” to “contest” to provide a clearer term matching the intent of the rule amendment. In addition, clarifying language was added to the definition of “contest” to better describe the type and intent of cash, prizes, and incentives that would be covered by the rule amendment language. Some comments asked for specific language to be included from ORS 610.105. The department reviewed this language, and felt that the existing proposed amendment language that referenced ORS 610.105 in its entirety (proposed in 635-050-0300(2)) was more inclusive, so no edits were made to that section based on public comment.

ISSUE

Prohibiting the take of certain wildlife as part of a contest.

ANALYSIS

Regulations regarding take of furbearing and unprotected mammals are established in Oregon Administrative Rule (OAR) Chapter 635 Division 50. The wildlife species defined as “unprotected mammals” are established in OAR 635-050-0050(13). In the agricultural section of laws, Oregon Revised Statute (ORS) 610.002 defines the term “predatory animals” to include certain groups of mammals and birds. Coyote, gophers, moles, mountain beaver (boomer), marmot, nutria, and porcupine are defined as both “unprotected mammals” and “predatory animals.” Authority for certain persons to control predatory animals is established in ORS 610.105 with the following language:

610.105 Authority to control noxious rodents or predatory animals.

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 ground squirrels and other noxious rodents or 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. [Amended by 1971 c.658 §30]

Regarding the Commission’s authority, 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, and such other restrictions or procedures that the Commission determines will carry out the provisions of the wildlife laws. 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.” 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.”

From an authority perspective, the department has determined that the Commission likely has the authority to adopt rules prohibiting the take of unprotected mammals through contests in Oregon as a manner of take and as a restriction that will carry out the provisions of wildlife law. This includes furtherance of the wildlife policy in ORS 496.012, and implementing the goal in ORS 496.012(7) of making decisions that affect wildlife resources for the benefit of the wildlife resources and to make decisions that allow for the best social, economic, and recreational utilization of wildlife resources by all user groups. The Commission’s rules may not impede upon predatory animal control activities authorized in statute (ORS 610.105).

Department staff developed an administrative rule amendment proposal for the Commission’s consideration. The proposed amendments would establish a definition for the term “contest” to mean a manner of take involving a competition, tournament, derby, or other event that has the objective of killing unprotected mammals native to Oregon for cash, prizes, or other incentives. The proposed amendments would make it unlawful to organize, sponsor, conduct, or participate in a contest that has the objective of killing unprotected mammals native to Oregon but specifically provides an exemption for control of predatory animals pursuant to ORS 610.105.

The exemption related to ORS 610.105 is necessary for the proposed amendments to stay within the Commission’s authority. Additionally, opossum and nutria are not native to Oregon and therefore take of these species would not be affected by the proposed amendments.

The proposed rule will not prevent a landowner from using a contest as a manner of controlling predatory animals on their property as authorized pursuant to ORS 610.105.

OPTIONS

1. Adopt proposed rule amendments as recommended by staff.
2. Modify proposed amendments to administrative rule recommended by staff.
3. Take no action.

STAFF RECOMMENDATION

1. Option 1

DRAFT MOTION:

I move to approve the amendments to OAR Chapter 635, Division 050 as proposed by staff in Attachment 3 and determine that doing so will carry out the provisions of wildlife laws as described in Attachment 3 and Commission deliberations.

Effective Date: *Upon Filing*