

Agenda Item Summary

BACKGROUND

The Landowner Preference (LOP) Program was first implemented in 1982; a time when the number of general seasons with unlimited numbers of tags for bull elk and buck deer was being decreased and the number of controlled hunts was being increased. While the Oregon Department of Fish and Wildlife (Department) recognizes the importance to wildlife of habitat provided on private lands, the original purpose of the LOP Program was twofold:

- 1) Provide landowners who were unsuccessful in the controlled hunt drawing for deer the opportunity to hunt their own property.
- 2) Offer a means of non-monetary compensation to landowners suffering damage caused by big game.

Current Oregon Administrative Rules (OARs) set 40 contiguous acres as the minimum acreage eligible for registration in the LOP Program. The petition submitted by Jeff Mullins is asking the Oregon Fish and Wildlife Commission (Commission) to liberalize the LOP Program by allowing parcels of less than 40 acres to be registered into the program.

Mr. Mullins' petition is a "petition for rulemaking" under the Administrative Procedures Act. Such a petition is used to put a rulemaking concept (a proposed new rule, or some amendment of an existing rule) in front of the Commission, to determine whether the Commission is interested in putting that concept out for public review through a rulemaking process. At this point the Commission is merely being asked whether it is interested in beginning a rulemaking process; the Commission is not being asked to act on a proposed rule amendment.

The Commission has broad discretion to decide how to respond to this petition. The Commission may choose to begin rulemaking to consider Mr. Mullins' proposed rule amendment, to begin rulemaking on a concept based on Mr. Mullins' proposal (but changed in some way), or to not begin rulemaking at all.

PUBLIC INVOLVEMENT

- Communication with local sports groups and other interested parties.
- Questions from interested persons were answered.
- Correspondence.

ISSUE 1

Consider petition to allow land parcels of less than 40 acres to be registered in the Landowner Preference Program

ANALYSIS

The request before the Commission today is not a new topic. Since the LOP Program was implemented in 1982 the minimum acreage allowed to be registered in the program has been 40 acres.

The 1991 Oregon Legislature suggested the Commission consider appointing a LOP Task Force to develop recommendations to the Commission. The Task Force included Oregon Legislative Representatives, Commissioners, Landowners, and hunting organizations.

The 1993 Task Force "Recommendation 7" states, "Acreage to meet minimum requirements for a landowner preference tag must be contiguous to qualify". Recommendation 8 specifies, "Tagholders may hunt any of their property in the hunt area if they meet the minimum requirements for the tag in that hunt area." The phrase "in that hunt area" recognizes the difference in minimum acreage for buck deer and bull elk which is 40 acres in western Oregon and 160 acres in eastern Oregon as recommended by the Task Force in their "Recommendation 6". All three of these recommendations were approved by the Commission.

In 2004, a group of Department Controlled Hunt staff, Biologists, and Oregon State Police (OSP) Game Officers met to discuss issues within the LOP Administrative Rules and potentially recommend revision of the rules. There was a long discussion concerning acreage requirements to qualify for tags, and hunting on properties of less than the minimum acreage. Questions asked of additional Department and OSP staff included:

- 1) Should we propose allowing landowners to add up the acres of all of their properties or only those above the minimum to qualify for a given number of tags?
- 2) Should we propose changing the existing administrative rule 635 075-0010(2) to allow landowners to hunt on properties smaller than the minimum?

After further discussion and consideration the decision was to not recommend changing the OARs related to contiguous acreage or hunting on properties smaller than the minimums (40 acres in western Oregon).

In 2008, a Landowner Preference Review Committee included representatives from the Oregon Cattlemen's Association, Oregon Farm Bureau Federation, Oregon Guides and Packers, three hunting

organizations and one landowner at large was convened to once again review the program. Oregon State Police and ODFW staff facilitated the meetings and provided information and advice. The Committee met four times to review the LOP Program and develop recommendations for the Commission. The Committee discussed virtually all facets of the LOP Program including contiguous acres and minimum acreage to participate. The Committee did not recommend any change regarding contiguous acres. The only change to minimum acreage proposed was to increase the minimum acres for bucks and bulls in eastern Oregon from 160 to 640; this proposal was not adopted by the Commission.

During the 2008 LOP review the Department looked at the acreage requirements for landowner tags in other western states. While programs differ, and some states do not have landowner tag programs, Oregon was the most liberal of states with programs based on acreage. For example:

California: Deer – Minimum 640 acres
Elk – Minimum 5,000 acres W/elk on property

Colorado: Deer, Elk, Pronghorn – 160 acres

Idaho: Deer and Elk – 640 acres

Montana: Deer – 160 acres must have deer on property
Elk – 640 acres must have elk on property

Nevada: Based on damage;
Deer -160 acres, must have deer on property
Elk - 640 acres, must have elk on property

Utah: Deer – 640 acres

Wyoming: No LOP but there is a program for tags based on damage. Deer, Elk, Antelope – 160 acres

Allowing landowners to register properties with below the minimum required would essentially eliminate minimum acreage requirements and replace it with an aggregate acreage requirement with statewide implications.

Statewide, for controlled hunts that encompass their property, landowners with a total of 40 acres would be eligible for two antlerless deer tags and two antlerless elk tags. In western Oregon they would also be eligible for two buck deer tags and elk tags could be for bull or antlerless hunts. Landowners in eastern Oregon with a total of 160 acres would also be

eligible for two buck tags and have the option of receiving either bull or antlerless elk tags.

It should also be noted that each LOP tag may be converted/split into two tags for antlerless animals if there is a damage complaint from the landowner. Damage is largely in the "eye of the beholder", with a considerable range of tolerance between landowners. To change regulations in a way that would increase antlerless harvest at this time when antlerless harvest is being reduced in many areas may not be in the best interest of the hunters or deer and elk populations.

OSP has expressed concerns in the past regarding compliance with LOP regulations including hunters with landowner tags hunting off of the registered lands; to essentially eliminate minimum acreage requirements would make enforcement even more complicated.

For reasons including those outlined above, consistent with the previous 1993, 2004, and 2008 reviews of the LOP Program, The Department does not support the petition presented here today.

Section 2 of the LOP statutes is set to sunset January 2, 2014; between now and that date there will be many discussions of potential changes to the LOP Program and the issues raised by the petitioner will undoubtedly be included in those conversations.

OPTIONS

1. Accept the petition and direct staff to initiate rulemaking consistent with Commission direction.
2. Deny the petition.

**STAFF
RECOMMENDATION**

Option 2.

DRAFT MOTION

I move to deny the petition submitted by Mr. Jeff Mullins and direct the Director to notify the petitioner of the Commission's decision in writing.

EFFECTIVE DATE:

N/A