

**Exhibit B**

**Public Correspondence received as of  
January 5, 2017**

## Roxann B Borisch

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**From:** Colin Gillin <colin.m.gillin@state.or.us>  
**Sent:** Monday, December 19, 2016 10:29 AM  
**To:** Roxann B Borisch; Randi J Lisle (randi.j.lisle@state.or.us); Carol Turner (carol.d.turner@state.or.us)  
**Cc:** Kevin Blakely  
**Subject:** FW: Skunk question

I asked her for email addresses and names if she or the organization could provide.

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**From:** bwexcavation97 [mailto:bwexcavation97@yahoo.com]  
**Sent:** Monday, December 19, 2016 10:02 AM  
**To:** Colin Gillin  
**Subject:** RE: Skunk question

Hi,  
Thank you for answering so promptly. There is a Facebook group called Oregon Skunk Owners. Which is where I saw a copy of the letter. Would you like me to have them all send their email addresses to you?

I appreciate your reply and I feel much better. I will share your answer with the others.

Also there are two vets that I could find in Oregon. Maybe they could have some literature from you, and share that information with their clients. Just a thought.

If you would like their names I will be happy to share.  
One is Eugene Animal Hospital. The other one is in Beaverton I believe.  
Brenda Watts

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----  
**From:** Colin Gillin <colin.m.gillin@state.or.us>  
**Date:** 12/19/16 9:22 AM (GMT-08:00)  
**To:** [bwexcavation97@yahoo.com](mailto:bwexcavation97@yahoo.com)  
**Cc:** Roxann B Borisch <roxann.b.borisch@state.or.us>  
**Subject:** Skunk question

Hello Brenda

Thanks for the email. The issue with ORS 498.029 is it is a statute and only the legislature can change the language. And the administrative rules, such as those in this draft regulating skunk ownership, cannot supersede or overrule statutes. With that in mind, we interpret the statute to mean that you cannot take anything in exchange (money, anything of value, etc.) for your skunk if you were to give the animal to another skunk

owner with a wildlife holding permit. This means you can “gift” it to another permit owner in Oregon or anyone out of state. You just can’t sell them or trade, barter, exchange in any way in Oregon.

I hope that helps. Feel free to give me a call or email if you have any other questions.

One question to you – is there an organized pet skunk community or organization in Oregon? We are trying to make certain we send the rules to everyone with a pet skunk so they can review and comment and insure that all skunk owners become permitted to avoid violation of the rules once adopted. Thanks for your help.

Best regards

Colin Gillin

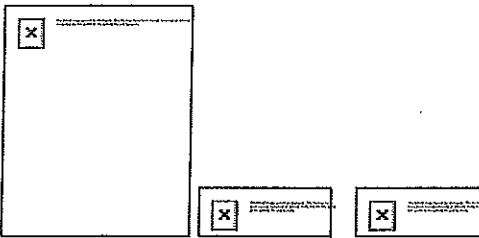
State Wildlife Veterinarian

Wildlife Health and Population Lab Program Manager

Oregon Department of Fish & Wildlife

Ph 541-757-5232

Cell 541-231-9271



[www.ODFW.com](http://www.ODFW.com)

[http://www.dfw.state.or.us/wildlife/health\\_program/index.asp](http://www.dfw.state.or.us/wildlife/health_program/index.asp)

**Roxann B Borisch**

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**From:** Colin Gillin <colin.m.gillin@state.or.us>  
**Sent:** Tuesday, December 20, 2016 11:19 AM  
**To:** Kevin Blakely; Roxann B Borisch  
**Subject:** FW: Response to 11/23/16 skunk owner letter

-----Original Message-----

**From:** Candy Hegele [mailto:lonepineclydesdales@yahoo.com]  
**Sent:** Tuesday, December 20, 2016 8:09 AM  
**To:** Colin Gillin  
**Subject:** RE: Response to 11/23/16 skunk owner letter

Mr. Gillin:

Thank you for taking the time to respond. Your explanation is very reasonable.

Happy Holidays.

Candy Hegele  
Lone Pine Clydesdales  
Terrebonne, Oregon  
503.519.3606

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On Mon, 12/19/16, Colin Gillin <colin.m.gillin@state.or.us> wrote:

**Subject:** RE: Response to 11/23/16 skunk owner letter  
**To:** "lonepineclydesdales@yahoo.com" <lonepineclydesdales@yahoo.com>  
**Cc:** "Roxann B Borisch" <roxann.b.borisch@state.or.us>, "Randi J Lisle (randi.j.lisle@state.or.us)" <randi.j.lisle@state.or.us>  
**Date:** Monday, December 19, 2016, 11:57 AM

Dear Ms. Hegele

Roxie Borisch forwarded your email to me and it has been on my list to get back to you. In answer to your question about tattooing, the advisory group felt it necessary to provide a mechanism for owners of various held wildlife (raccoons, skunks, bobcats, cougars, black bears, wolves and other identified wildlife) to permanently mark their animals.

In the case of pet skunks, raccoons and some other "grandfathered in" pet wildlife, permanently marking the

11/23/16. The letter was sent to address that is nonexistent. Please update my correct address and to it is important to me to continue to get updates fro OFW. My correct address is:

Candy Hegele  
875 NE King Way  
Redmond, OR 97756

I would like to thank Oregon Fish and Wildlife on their efforts to make a happy medium for skunk owners in Oregon. I do believe these rules and regulations are a fair approach to allow Oregonians to continue to own pet skunks and allow us to have them as pets and continue using them in educational programs.

My only question is the reasoning behind the tattoo? I agree the animals all should be spayed and neutered (which I always have had them done), however I think tattooing may be an additional unnecessary step.

Thank you again for allowing feedback and working with the people. If you have any questions, please feel free to contact me.

Candy Hegele  
Lone Pine Clydesdales  
Terrebonne, Oregon  
503.519.3606

animal allows the local biologist or municipality to reunite an escaped animal with you the owner and you are able to accurately identify it as yours. Many people tattoo their animals when having them spayed or neutered. We also provide the option of using a radio-frequency identification tag or microchip that can be easily injected under the skin by your veterinarian. The animal can then be identified by a biologist or a veterinarian using a reader wand. It is the same technology for cats and dogs and other pets.

We also want the animals permanently marked and those marks identified back to your record. We know that 95% or better of the wildlife pet owners follow the rules and obtain their pets from out-of-state licensed USDA breeders. But there are those who will trap the public's wildlife, including removing young animals, and use them for a variety of reasons, some of those activities and uses we know are nefarious. Having animals permanently identified helps curtail these other activities.

Thanks for your email and feel free to call me or email if you have any further questions.

Best regards

Colin Gillin  
State Wildlife Veterinarian  
Wildlife Health and Population Lab Program Manager  
Oregon Department of Fish & Wildlife  
Ph 541-757-5232  
Cell 541-231-9271

[www.ODFW.com](http://www.ODFW.com)  
[http://www.dfw.state.or.us/wildlife/health\\_program/index.asp](http://www.dfw.state.or.us/wildlife/health_program/index.asp)

From: Candy Hegele [mailto:[lonepineclydesdales@yahoo.com](mailto:lonepineclydesdales@yahoo.com)]

Sent: Sunday, December 11, 2016 7:53 AM  
To: [roxann.b.borisch@state.or.us](mailto:roxann.b.borisch@state.or.us)  
Cc: [candy@peterkinpc.com](mailto:candy@peterkinpc.com)  
Subject: Response to 11/23/16 skunk owner letter

Roxie:

Sorry for the slow delay in responding to your letter of

## **Roxann B Borisch**

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**From:** Sheila Finch <sheilafinch97@yahoo.com>  
**Sent:** Friday, June 10, 2016 5:31 PM  
**To:** odfw.commission@state.or.us  
**Subject:** I oppose division 44!

I have volunteered countless hours over the past several years to help the non-profit "A Walk On The Wild Side" and am well aware of the amazing things they are doing. They have initiated a breeding program to increase the population of species near extinction, and have created several programs to educate the public on the importance of caring for animals, and the reality of owning an exotic animal. In shutting down these programs, you'll be depriving the public of honest education as well as allowing species near extinction to completely fall off the face of the planet. I feel as though it is not wise to shut it down, and the only reason you would is due to the fact that you're lack any knowledge of the fact at matter.

Regards,  
Sheila Finch

Sent from Yahoo Mail on Android

## Roxann B Borisch

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**From:** Jexotics Rus <jexoticsrus@yahoo.com>  
**Sent:** Saturday, June 11, 2016 1:52 PM  
**To:** odfw.commission@state.or.us  
**Subject:** F&W Division 44 Proposal

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

**Categories:** Forwarded to Wildlife

I am writing today to express my Opposition towards Division 44 Proposal. As a Wildlife Educator I have years of hands on knowledge and experience and understand the need for public awareness in the continued efforts for preserving all species for conservation. There are many small and large exhibitors throughout the United States and all contribute to the wellbeing and sustaining future of animals. USDA through APHIS regulates them to ensure proper animal safety and husbandry. AZA along with ZAA are just two examples of knowledgeable organizations that work in support of some facilities. I myself am an active member of both organizations and others; however neither dictate or monitor the care and safety of my animals. Without being USDA licensed no one is able to have the animals such organizations as AZA members must have to qualify for membership.

Please take a moment to look at the value in continued animal education for the preservation of future conservation of all species. Support the small and large exhibitors/facilities etc that commit their time to the well being of their animals.

Thank You

Jennifer Kasserman  
7815 Houser St  
Kansas City, MO 64167  
816-674-7277

Exotics R Us

## Roxann B Borisch

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**From:** Chris Rombough <rambo2718@yahoo.com>  
**Sent:** Saturday, June 11, 2016 9:23 AM  
**To:** odfw.commission@state.or.us  
**Cc:** Curt Melcher  
**Subject:** Division 44 regulations (addendum)  
**Attachments:** Final letter to the Commission.docx; Letter and suggestions to Commission.docx

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

**Categories:** Forwarded to Wildlife

Dear Commissioners,

Would you please re-read my previous letter and carefully consider it? I realize that I submitted it just before the meeting, and as such, you may not have had time to read it or give it more than just a cursory glance. All I ask is that you carefully read it and consider the points I made as objectively as possible.

In preparing that letter for you, I spent nearly two hundred hours collecting and summarizing information to predict the potential outcome of adopting these rules. I believe I have accurately assessed the situation, and I would simply like you to carefully examine the information and be aware of the facts.

I have now attended two Commission meetings regarding these rules. I have seen the draft rules for raccoons and skunks changed following emotional appeals, and the requirements for accreditation of large animal facilities and transport of animals reconsidered on financial grounds. I cannot make you an emotional appeal, but I can – and did – provide you with data.

I sincerely believe that the information which I collected for you is the most accurate analysis of the situation with respect to the perspective of those involved with amphibians and reptiles and the likely outcome should you pass the proposed regulations. I assure you that people do love their pets, even reptile pets. While collecting the information which I presented you, I found a number of cases in which reptile owners litigated state wildlife departments following seizure of pets, and sadly, one recent case in which a reptile owner took his own life over the handling of such an event.

People also love their relationship with reptiles and amphibians and the ability to have children collect and observe an animal or two, and to take those into class. If you doubt my assessment, please consider the letters (public correspondence) that you received. One final thing to remember is that from the public's perspective, what is a normal and accepted activity for a natural resource professional (applying for permits) can be a very difficult and intimidating process, and the potential for inspection or confiscation of animals makes it more distasteful.

With respect to this process, I sincerely appreciate the opportunity to provide input, but I was disappointed with how rapidly actual data were dismissed with a single assertion. Assertions should never be a substitute for actual data, no matter how fervent they are. For example: I personally have been inspected for amphibians and reptile permits, as have others. In addition, the challenges made to the ranking system are valid, based on accurate data, and are made by scientists, not "collectors". I know, because I have helped assign species' ranks and have contributed data. It is a good model for some things, but it is not perfect. (That doesn't mean it can't be changed: I have ideas on how it, too, can be improved to more accurately represent amphibians and reptiles to facilitate management.)

The suggested alternative that I made (a take permit) was misunderstood, but not unprecedented. An almost identical system is being used very successfully in other states to manage their nongame reptile species (AZ, CA, etc.), and it is easy to enforce and generates considerable revenue. If you have any interest in it at all, I would be happy to explain it thoroughly, at your convenience of course. I hope that you would allow me the opportunity to do so if you had any questions.

In closing, I would like to reiterate that, unlike most of the participants in this process, I have no immediate personal stake in the issue. My work requires different permits, I don't get paid to be here, and I'm not representing anybody. I am writing you because I believe that I have a better understanding of the situation and the potential outcome than the group which drafted the rules. Because of this, I believe that alternate courses of action would be much more beneficial for the future of Oregon's amphibians and reptiles. It is not my intent to criticize any Department employee, and I am not trying to convince you to do things a particular way. I just want you to have the best available information on which to base your decision.

Respectfully,

Chris Rombough

10 June 2016

PS: For the Commission's information, "collector" is a derogatory term in herpetological circles, used to denote somebody who illegally takes animals from the wild for sale. As so used, "collector" refers to a poacher, not to somebody who keeps pet reptiles or engages in legitimate scientific collecting. It can definitely raise hackles if applied to a biologist.

I read the public correspondence, and noted that several objections to the way that the ranking system was applied came from some of the most accomplished and well-respected herpetologists in the Pacific Northwest. They have had long and productive careers, during which they have been at the forefront of amphibian and reptile conservation. In fact, I know few (if any) professionals who have accomplished more. Indeed, the Department has solicited input from these and other herpetologists in previous efforts (e.g., the 2015 update of the Oregon Conservation Strategy). Like myself, they strongly oppose and would never support illicit collecting. They simply feel that the process should be based more closely on actual data.

PS2: If you have read this far, I would like you to know that Dr. Gillin was polite and professional in our personal conversations, even when we had differing opinions on a subject. I hope I could be as professional in a similar situation. He truly did credit to your Department, and I appreciated the opportunity to talk to him.

Thank you again for your time.

A copy of this letter is attached, as well as the one to which I refer (submitted before the meeting).

(By the way, I received my stakeholder letter just before the meeting. It was dated May 31 but postmarked June 03.)

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

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

Letter contents:

Part 1. Background

Part 2. Summary of problem

Part 3. Proposed solution

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

Part 5. Other proposed changes to Division 44 OARs

## **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

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 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

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 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.

## Roxann B Borisch

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**From:** Richard F. Hoyer <charinabottae@earthlink.net>  
**Sent:** Tuesday, July 19, 2016 9:04 AM  
**To:** ODFW; Roxann B Borisch; Richard F. Hoyer  
**Subject:** Div. 44 reg. comments

Dear Commissioners;

ODFW biologist Roxann Borisch informed me that the Commission delayed its decision on the revision of OAR Div. 44 regulations. She mentioned that added comments could be provided.

- 1) The NatureServe ranking system relies heavily on subjective opinions and largely is void of valid evidence for many ranked species. It therefore lacks scientific credibility and should not have been used as a justification for listing species as needing protection. As an example, the NatureServe claim of having “-- long-term concern—“for S-4 ranked species is only opinion lacking support from valid evidence.
- 2) Notwithstanding the above comments, species ranked as S-4 are identified as “Not rare”. With the revised regulations advocating protection for S-4 ranked species, this amounts to ODFW claiming species that are “Not Rare” are in need of being protected.
- 3) By proposing to place widespread, common, and abundant species in a protected status (Racer, Rubber Boa, Ringneck Snake, etc.), those that formulated the revised regulations did so from an uninformed position. That is, they lacked extensive field experience and a basic knowledge of our native reptiles and amphibians.
- 4) With listing species as ‘protected’, ODFW is preserving wildlife resources for everyone, but then cannot be used by anyone.

Richard F. Hoyer (Wildlife Biologist, Fisheries and Wildlife, OSU, ‘55’, Corvallis, Oregon)