



AGENDA ITEM SUMMARY

BACKGROUND

On September 24, 2020, the Oregon Department of Fish and Wildlife (Department) received a document entitled “Petition to initiate rulemaking to amend OAR 635-050-0070 to permanently close commercial and recreational beaver trapping and hunting on federally-managed public lands and the waters that flows through these lands” from one member of the public and nine non-government organizations (Attachment 2). This petition requested the Commission adopt regulations to prohibit the harvest of beaver across all federal lands 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 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 December 23, 2020 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 product of the process at a later date.

The request for a beaver harvest closure across all federal lands in Oregon was received as public comment in both written and oral testimony for the Furbearer Trapping and Hunting Regulations Commission agenda item in June 2020. A detailed Commission discussion occurred on the topic, direction to staff was undertaken, and updates have continued through the four subsequent Commission meetings.

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 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 petitioners’ proposed rules.

The Department has received comments in support and opposition to the petition and the rule it addresses (Attachment 3). Although not yet a part of a formal petition, members of the public also provided written and oral comments on a request to prohibit beaver harvest on all federal lands in the June 2020 Commission meeting.

ISSUE 1

Petition to amend the Oregon Furbearing and Unprotected Mammal Regulations to prohibit the harvest of beaver on all federal lands in Oregon.

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

Beaver are classified as a furbearer and regulated by the Department. Beaver populations are not in any risk of extinction nor are they identified as a species of greatest conservation need under the Oregon Conservation Strategy. Like all furbearers, harvest regulations require a license and take may only occur during the open season. Current regulations allow licensed furtakers to harvest beaver from November 15 to March 15 statewide except that beaver harvest is explicitly prohibited in approximately sixteen areas and wherever hunting/trapping is prohibited. All licensed furtakers are required to report on their activities and that is the primary data used by the Department to monitor harvest and potential population impacts. The topic of population impacts of beaver harvest and all forms of take were addressed in the June 2020 Commission meeting as part of the review and adoption of the 2020-2022 Furbearer Hunting and Trapping Regulations. Continued conservation and management of the furbearer necessitates maintaining license, harvest season, and reporting requirements in rule.

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). Members of the public, organizations, and state legislators also spoke on the exact request outlined in the petition in the June 2020 Commission meeting, including the petitioners themselves. Original testimony was mixed but the majority of form letters were in favor of the requests identified in the petition.

Additional comments are also expected to be forthcoming. Prior to the Commission meeting on November 13, 2020, 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 current regulation allows for the harvest of beaver from November 15 to March 15 statewide except that beaver harvest is explicitly prohibited in approximately sixteen areas and wherever hunting/trapping is prohibited. In the areas explicitly closed to beaver harvest, river otter harvest is also prohibited to reduce incidental take of beaver.

The beaver harvest closures vary greatly in their location, landownership, size, and time since implementation, but the majority are affiliated with national forests. These closures are unique to the Oregon Furbearer Hunting and Trapping Regulations, their intent is not well documented and it is unknown if the intent is being met. The rules are not overly complex, are understood by licensed furtakers, and enforceable by the Oregon State Police.

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 current rule does not conflict with other rules or regulations. Beaver are not a species in peril nor included as a Conservation Strategy Species or listed under the State or Federal Endangered Species Acts. No other state or federal government entity has authority to regulate furbearer harvest in Oregon.

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

No changes have occurred in the subject area affected by the rule.

6. The statutory citation or legal basis of the rule

The legal basis for the current rule has not changed, is still relevant, and the rule was most recently adopted in June 2020.

Conclusion

Most of the recent interest in beaver centers on their dam-creating abilities and the positive direct or indirect impacts of those dams, including providing habitat for many species of fish and wildlife, including ESA-listed coho. All beaver can create dams, but do not always do so as they do not have the need or are unable due to unsuitable damming conditions. Multiple data sets in Oregon show that the majority of beavers do not build dams.

The primary goal of the petition is to increase the number of beaver dams on federal lands in Oregon. The request is predicated on the petitioners' assumptions that:

1. Beaver populations are decreasing or are being suppressed.
2. Regulated beaver harvest on federal land is decreasing or suppressing beaver populations.
3. All beavers build dams and therefore a lack of dams means no beaver are present.
4. Regulated beaver harvest on federal land is directly responsible for a lack of beaver and lack of beaver dams.
5. Suitable habitat for beaver is unoccupied.
6. Regulated beaver harvest on federal land is directly responsible for unoccupied suitable beaver habitat.

Therefore, the petition requests a closure of beaver harvest on all federal lands in Oregon.

At the June 2020 Commission meeting, the biology of beaver, their ecological role, and research on beaver in Oregon were thoroughly discussed as well as a request to prohibit beaver harvest on all federal lands. The Commission did not initiate a rulemaking process to evaluate that request. However, the Commission did direct staff to further evaluate beaver conservation and management on public lands including the formation of a work group.

As staff will address in the presentation, there is insufficient, substantive content to support the petition assumptions and invalidate the Commission discussion and direction during the June Commission meeting and subsequent meetings. As such, staff recommends the Commission deny the petition. Staff also recommends continuing the direction provided by the Commission in June, which may include a consideration of rulemaking at a later time.

OPTIONS

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

STAFF RECOMMENDATION

Option 1.

DRAFT MOTION:

After considering the criteria listed in ORS 183.390(3), the information in the petition and the comments submitted by the public, I move to deny the petition.