

MEMORANDUM



TO: House Committee on Agriculture and Natural Resources
FROM: Quinn Read, Defenders of Wildlife
DATE: April 10, 2017
RE: Testimony in support of HB 3228 – Modifying the state wildlife policy

On behalf of Defenders of Wildlife’s 18,000 members and supporters across Oregon, we urge you to support HB 3228, which provides much needed clarification to Oregon’s Wildlife Policy. The Oregon Department of Fish and Wildlife has a broad conservation mission that has suffered from years of uneven interpretation and application of the Wildlife Policy. HB 3228 resolves these statutory interpretation issues by clarifying the Wildlife Policy in accordance with guidance from the Attorney General’s office.

The Wildlife Policy (*Oregon Revised Statutes* 496.012) currently states:

It is the policy of the State of Oregon that wildlife shall be managed to prevent serious depletion of any indigenous species and to provide the optimum recreational and aesthetic benefits for present and future generations of the citizens of this state.

The statute includes related – and occasionally conflicting – mandates to “prevent serious depletion of any indigenous species” and to provide “optimum recreational and aesthetic benefits.” As written, it implies the two directives are equal. Without further direction, the agency has been left to determine for itself how to strike the proper balance between these two mandates. For the last twenty years, the agency has come down firmly on the side of providing optimum recreational benefits to hunters and anglers, at the expense of protecting threatened and endangered indigenous species.

In a March 10, 1997 letter to ODFW Acting Director Rod Ingram, Assistant Attorney General Cheryl Coon explained that although the phrasing of the statute seems to present the two goals as equal, “optimal recreational and aesthetic benefits can only exist to the extent that serious depletion of the species is prevented.” This is the only logical reading, because if a “species is seriously depleted, it will not be possible for optimum benefits to be provided.” Accordingly, the Attorney General’s office asserted that the “Commission’s and Department’s overriding obligation is to manage to prevent serious depletion, which thereby enables the Department and Commission to provide optimum recreational and aesthetic benefits.” [Emphasis added.]

On July 15, 1997, ODFW Director Jim Greer circulated the Attorney General’s interpretation of the Wildlife Policy in a memo to all staff. The memo emphasized that in accordance with the opinion of agency attorneys, “the Commission’s and the Department’s overriding obligation is to manage to prevent the serious depletion” of any indigenous species. [Emphasis in the original.] Director Greer sent the memo to all fixed stations “with the understanding that copies will be made available for all

employees at that station to read and use in any future discussions of statutory mandates in the policy.”

Five years later, in a March 30, 2002 letter to Fish Division Administrator Ed Bowles, Assistant Attorney General Shelley McIntyre revisited the issue. The purpose of the letter was to confirm that the Commission had authority to adopt rules as part of the Native Fish Conservation Policy that would establish the conservation of naturally-produced native fish species as the Department’s “overriding obligation,” “top priority,” or “principal obligation for fish management.” In doing so, the Attorney General’s office cited its March 10, 1997 letter and reiterated that the “Commission’s and Department’s overriding obligation is to manage to prevent serious depletion.”

HB 3228 does not expand the mission of the Oregon Department of Fish and Wildlife. It simply clarifies the Wildlife Policy to reflect the opinion of the Attorney General’s office that the agency’s overriding obligation is to prevent serious depletion of any indigenous species. This means that native wildlife must be managed to preclude the “significant likelihood” that they will become threatened or endangered. OAR 635-007-0501 (56).

HB 3228 also modifies the list of coequal goals of wildlife management following the policy statement to include:

- (7) To protect, maintain and restore indigenous nongame wildlife resources for their intrinsic values, ecosystem functions and long term benefits.

The explicit addition of nongame wildlife is in line with the Attorney General’s opinion and ODFW’s broad conservation mission. HB 3228 provides necessary and timely clarification of Oregon’s Wildlife Policy. For these reasons, Defenders of Wildlife strongly supports HB 3228, and we urge you to do the same. Thank your considering our comments.

Respectfully,
Quinn Read