

**Idaho Fish and Game Commission
Special Meeting
August 16, 2010
Idaho Department of Fish and Game
Upper Snake Region 4279 Commerce Circle
Idaho Falls, Idaho**

August 16

MISCELLANEOUS

Executive Session

10-79 Commissioner Trevey moved and Commissioner Barowsky seconded a motion to hold an executive pursuant to subsection (f) of Idaho Code Section 67-2345 to discuss pending litigation. Roll Call Vote: Budge: aye; Trevey: aye; Barowsky: aye; Wheeler: aye; Power: aye; McDermott: aye; Wright: aye. Vote tally: 7 ayes.

10-80 Commissioner Barowsky moved and Commissioner Budge seconded a motion to come out of executive session. The motion carried unanimously.

The executive session ended at 12:25 p.m. with no action taken. The Commission discussed pending litigation with counsel. The discussion included the legal consequences and options related to the August 5 decision by U.S. District Court Judge Molly, which resulted in the return of wolves in Idaho to federally protected status under the Endangered Species Act.

Opening Comments

Chairman Wright called the meeting to order and thanked Regional Supervisor Steve Schmidt and staff for hosting the Commission meeting.

Consent Calendar

Items listed in the Consent Calendar:
Minutes, May 19-20 June 9, June 17 and June 30, 2010.
Budget Adjustment WGA DSS

10-81 Commissioner Budge moved and Commissioner Power seconded a motion to accept the items listed in the consent calendar. The motion carried in a unanimous vote.

Agenda Changes

Layne Bangerter, State Director of Natural Resources and Environment, Senator Crapo's office will speak following Director Robyn Thorson.

RULES

Season Setting: Migratory Game Birds

Jeff Knetter, Upland Game & Waterfowl Staff Biologist, presented the Department recommendations for Waterfowl and Sage-grouse seasons and rules (Appendix 43, Exhibit 85). Most of the waterfowl harvested in Idaho are produced in Canada. Habitat conditions in these breeding areas were characterized as average in 2010. The pond index increased 5% from 6.4 million in 2009 to 6.7 million in 2010. The estimated mallard abundance decreased 1% from 2009 levels to 8.4 million in 2010.

Idaho's waterfowl season is set within a framework established by the U.S. Fish and Wildlife Service on July 29, 2010 after meeting with all state fish and wildlife agencies. The 2010-11 frameworks for Idaho are 107 days for both ducks and dark geese between September 25, 2010 and January 30, 2011. The light goose framework extends to March 10.

The Department's recommendation is to take the maximum allowed hunt days and bags allowed by federal framework. The proposed daily duck bag limit would be 7 ducks; but not more than 2 female mallards, 2 redheads, 3 scaup, 2 pintails, and 1 canvasback. A 107-day fall season is proposed for Canada and greater white-fronted geese with a 4-goose daily limit. A two-part season is proposed for snow and Ross's geese in the Southwest, Magic Valley, and portions of the Southeast and Upper Snake regions, with a 10-goose daily limit.

10-82 Commissioner McDermott moved and Commissioner Barowsky seconded a motion to accept the department recommendations as presented for the 2010/2011 waterfowl seasons. The motion carried in a unanimous vote.

Season Setting: Sage-grouse

Mr. Knetter reported that Sage grouse seasons are set in August to allow managers to evaluate lek data and determine whether West Nile Virus outbreaks or significant wildfire events are affecting any sage-grouse populations in Idaho.

In 2010, the Department will continue to use the sage-grouse season-setting protocol established in the 2006 Idaho Sage-grouse Plan. The Plan protocol calls for comparison of 1996-2000 lek count averages (the beginning of intensified surveys) to the most recent (2008-2010) three-year running averages, as well as minimum population and data criteria in determining season frameworks.

10-83 Commissioner Barowsky moved and Commissioner Power seconded a motion to accept the department recommendations for the 2010 sage grouse seasons and bag limits. The motion carried in a unanimous vote.

Rules: Trapping

Jon Rachael, State Wildlife Manager, presented the proposed rule changes to the trapping of predatory and unprotected wildlife and the taking of furbearing animals (Appendix 43, Exhibit 86). The Department has received input from the Commission, public in general, and some trappers that trap placement along roads and trails and at trailheads, campgrounds, and picnic areas are raising public, livestock, and pet safety concerns. Prior to the Commission meeting in July, we worked with the Idaho Trappers Association (ITA) and the Upper Snake River Trappers Association of Idaho (USRT) to address these concerns by regulation. Both ITA and USRT felt that the rules presented by the Department at the July Commission meeting would eliminate trapping and snaring on a substantial number of miles of trails and roads that receive little or no public foot traffic. In addition, the trapper associations and some trappers feel that seasonal trapping closures around trailheads, campgrounds, and picnic areas would better address safety concerns but we could still allow trapping in these areas during the winter when human activity is supposedly lighter.

At the July meeting, the Commission asked Department staff to continue to work with the trappers and others. IDFG has received further input from ITA, USRT, and others and have adjusted proposed rules to better accommodate ITA and USRT concerns in regards to trail and road closures. However, there is not agreement that trapping at and around campgrounds, trailheads, and picnic areas should only be seasonally restricted.

Prior to the July Commission meeting, staff solicited input from the Idaho Trappers Association, Upper Snake Rivers Trappers of Idaho, individual trappers, other resource users, and other members of the public. Since the July Commission meeting, staff has continued to work with the trappers association and others. In general there is agreement on the proposed rules except for year-round closure at campgrounds, trailheads, and picnic areas.

The proposed rules will address public, pet, and livestock safety concerns by defining the type of trap sets and establish trap set placement standards.

Mr. Rachael stated that the Trappers Association held their annual convention recently and came to a consensus on the proposed trapping rules (Appendix 43, Exhibit 87) but since that time the ITA has changes their position on the Department's proposal on the distance traps could be placed from the center line of trails.

10-84 Commissioner Power moved and Commissioner Wheeler seconded a motion to accept the department recommendations adopting the rules as outlined, with direction to staff to move forward with the Trappers Association to look at the campground closing situation and other issues that may come up, and how to move forward with trapper education and training for the future and continue the dialogue. The motion carried in a unanimous vote.

REPORTS

Wolf Management Update

Chairman Wright stated that he and Commissioner McDermott had the opportunity at the July WAFWA meeting to speak with Daniel Ashe, Deputy Director, U. S. Fish and Wildlife Service, and asked the question was there anything that Idaho could have done on either a legislative basis by the governor, commission or director in the past that would have prevented wolf introduction in Idaho. Director Ashe stated that the answer to the question was no and suggested that perhaps a white paper could be drawn up to that effect, and that the Service staff would be willing to meet with the Commission to discuss.

Robyn Thorson, Regional Director, U. S. Fish and Wildlife Service (Service) addressed the Commission. Director Thorson introduced staff Theresa Rabot who is charge of Endangered Species Act Operations and Steven Daugherty, Senior Advisor to Secretary of the Interior Ken Salazar. Director Thorson stated that Brian Kelly is the new Idaho State Project Leader and will be located in Boise. Mr. Kelly is completing his household move and is not in attendance today.

U.S. Fish and Wildlife Service Strategy in Response to Relisting of Wolves

Director Thorson provided copies of a document titled *Gary Wolves in Idaho: U.S. Fish and Wildlife Service Answers to Idaho Department of Fish and Game Questions* (Appendix 43, Exhibit 88). Director Thorson told the Commission she was here to respond to the Commissions comments and questions and to be accountable for a failure of a federal rule that now leaves Idaho in a very difficult situation. She hoped that by being here in person, she could show the Service's commitment to working with the State to address the complicated and very difficult situation regarding wolves.

Director Thorson stated that 2 years ago the Service delisted wolves in Idaho because they were biologically recovered, and the status of recovery has not changed. Wolves were delisted in Idaho because Idaho had a wolf management plan in place to show the capability and commitment of the State to manage this as a resident species; Idaho has this capability. Idaho and this Commission authorized and operated a fair chase wolf hunt, that was upheld under challenge. The Service supported that hunt and supports continued hunting of wolves consistent with the State Management Plan. Idaho took all necessary measures to achieve a very important goal for Idaho constituents, the restoration of state management of wolves. The fastest route to state management was the recovery of wolves. Opposition to the recovery of wolves would have drug this out as a federal operation in Idaho. Idaho did everything right to walk that path to have wolves recovered and wolves delisted.

However, the court ruled that as a matter of law the Service's rationale for delisting the wolf in Idaho was flawed; that the Service could not delist wolves in only 2 of the states in the northern rocky mountain population of wolves and leave wolves listed in the state of Wyoming. The court ruled that Service needed to treat the northern rocky population of wolves as one population.

The Service understands that Idaho has many questions and issues 'involving wolves and the biggest one is where to go from here. Idaho's actions succeeded and wolves were delisted because they were recovered and the steps that Idaho took sped up the possibility of state management. Idaho got that job done, but now the Service has to withhold that reward because of a court decision.

The first Commission request has been for a mechanism to continue a managed sport hunt for 2010/2011. Both staffs are working together to look at some paths for this but the likely-hood for finding one is small. The Service shares the commitment to a sport hunt in the state but we are not able at this point to identify a path. The Department of Interior will not be promoting decisions that are we know are legally indefensible. There have been so many losses in court on wolves at this point, that to proceed with something that has high risk for a litigation loss would frustrate long term issues rather than relieve them.

The Service is willing to look at everything to move forward on any path where success could be achieved. In the near term, immediately, the Service is standing ready to receive Idaho's proposal to control wolves in portions of the experimental population that are experiencing a high level of wolf-caused ungulate mortality.

Director Thorson stated that to look at all the options the Service is adding a staffer to the Boise office who will be specifically assigned to look at wolf issues with the state of Idaho.

The Federal rule failed, and it failed Idaho. The Service believed that this path was merited, but the court disagreed. The Federal government is committed to take the necessary steps to delist wolves in Idaho so Idaho can be in charge of that species. The Service will look at every possible measure towards this goal and success including a sport hunt in the state of Idaho.

A Commission question and answer period followed with Director Thorson and staff.

In closing Director Thorson stated "It is not just words; the Service is in this with the Idaho Department of Fish and Game to get back to a delisting, you have earned it. We are sorry that the rule failed. We will find a path because you have recovered wolves and thank you for doing that."

Layne Bangerter, Senator Crapo's office, reported that they are disappointed with the judge's recent ruling on wolves; it is bad for our sportsmen and ranchers. The Senator's office will follow the lead of the Governor and Commission to get back to delisting.

Status of IDFG 10(j) Proposal

Jeff Gould, Chief, Wildlife, provided an update on the status of the Idaho 10(j) proposal for Lolo Elk Management Zone (Appendix 43, Exhibit 89).

Mr. Gould stated that in 2009 Idaho demonstrated that we could successfully have a hunting season consistent with the 2008 State Management Plan. Prior to and subsequent to the 1st season the Commission adopted rules that establish the framework and other methods of take so when it is time to set another season those mechanisms are in place.

Following the Commission's direction from its July meeting, staff prepared options for state harvest limits, season dates, and bag limits to manage Idaho's wolf population at the 2005 population level.

These options can be revisited and presented during a future conference call at the request of the Commission.

However, these options were placed on hold August 5, 2010 when the Judge released his ruling and wolves were returned to a listed status in Idaho and Montana.

Consistent with the Commission's direction in the event wolves were re-listed, staff are working within the 10(j) rule framework to ready our 10(j) proposal for wolf control to address unacceptable impacts to elk in the Lolo Zone to submit it to the U. S. Fish and Wildlife Service for its consideration.

In 2006, Idaho completed the first 10(j) proposal and clearly documented that wolf predation was one of the major factors maintaining the elk population status below State management objectives in the Lolo Zone. However, the U.S. Fish and Wildlife Service did not think the proposal was adequate to meet regulatory standard for unacceptable impact to wild ungulate population set by 2005 10(j) rule.

In 2008, the Service revised the 2005 special rules and modified the definition of what qualifies as "unacceptable impact" to ungulates. As the Commission is aware, the Department was ready to submit a 10(j) proposal to the Service in 2008, but this submission became unnecessary with the delisting of wolves in 2008. Although the 2008 revised 10(j) rule is being contested through litigation, the Department is updating the 10(j) Lolo proposal for submission to the Service now that wolves have been re-listed.

The proposal must address each of the 7 elements required by 10(j) rule:

Basis for ungulate population objective

Data indicating ungulate herd below objective

Data indicating wolves are a major cause of the unacceptable impact

Why wolf removal is warranted to help restore ungulate population to objective

Level and duration of wolf removal

How ungulate response to wolf removal will be measured and control actions adjusted for effectiveness

Demonstrate attempts were and are being made to address other major causes of ungulate herd decline

Executive Summary of 10(j) Proposal:

- Lolo elk herd will continue to decline/ be depressed without intervention addressing one of the major causes of mortality to elk
- Manage for 20-30 wolves in Lolo over 5 years
- Monitor both elk and wolf populations through radio-telemetry, aerial counts, and ground observations
- This localized control measure will not reduce wolf populations in Idaho below the 20 breeding pairs and 200 wolves as required by 10 (j) for control actions
- Science-based proposal clearly documents why Idaho should be allowed additional management flexibility to address unacceptable impacts on elk in the Lolo Zone caused by a biologically recovered wolf population.

The Department has provided opportunity for peer review by 5 independent reviewers, and public comment, which is occurring now over a 14-day period, accepted through Friday September 3, 2010. The Department will consider comments and submit a final proposal to the Service in mid-September.

The Service may authorize wolf removal based on a determination that: the State followed rule procedures, unacceptable impact has occurred, data and other information presented support the proposed action, and proposed removal would not contribute to reducing the wolf population in Idaho below 20 breeding pairs and 200 wolves.

Director Groen stated that staff will need policy direction from the Commission in several significant areas. Questions for commission action: 1) does the Commission support appeal of the court decision; 2) does the Commission support seeking a congressional solution in cooperation with Governor Otter and Idaho's congressional delegation; 3) does the Commission support keeping lead agency role for management while wolves are listed or should Idaho return wolf management to the U. S. Fish and Wildlife Service. If Idaho does hand lead management authority back to the Service, should we keep some of the management activities as an agent of the Service.

We are looking at 3 choices: 1) we keep our lead agency role, 2) we keep some management under Service supervision, or 3) no state management until wolves are delisted.

If Idaho keeps the lead agency role what changes should we make to our MOA, our agreement with the U.S. Fish and Wildlife Service.

1. Should Idaho request the Secretary's allowance for public hunting under extraordinary circumstances as allowed under the 10(j) rules?
2. Should Idaho return enforcement lead for investigations back to the Service?
There is a funding question
If we agree to the MOU as lead do we give it a specific time period
3. If Idaho does not keep lead agency role, are there any management authorities we wish to keep under FWS supervision.

Kathleen Trever, Deputy Attorney General, stated that Commission has asked for evaluation of three management options. Regardless of which of these options the Commission recommends, as long as Idaho keeps in place a state management plan approved by the U.S. Fish and Wildlife Service, the state remains ready, willing, and able to resume state management when wolves are delisted. The question regarding the three management options is what the Commission and state want to do while wolves are listed. Does the state continue in the role of lead management authority where you have the ability under MOA to set the priorities and budget and resources to determine research and monitoring needs. Or does the state choose to get out of the management business while wolves are listed and leave those decisions to the federal government or whomever they might contract with. In the middle of those 2 options is the ability to select certain portions of the state management plan and get the Service to pursue those specific portions, whether it be monitoring or livestock depredation control, and do those activities as a designated agent of the Service under a cooperative agreement. These are the 3 broad options.

Chairman Wright stated that the Commission will need to make some decisions as outlined by Director Groen and Deputy Attorney General Trever.

Commission discussion followed on which of the presented 3 options the Commission would like to pursue and how they will implement their decision.

Director Groen reviewed the results of the commission discussion:

- Support a court appeal
- Supports seeking a congressional solution
- Keep a lead management role while wolves are listed
- Pursue Service authorization of hunting as allowed under the under 10(j) rule in “extraordinary circumstances.”
- Ensure federal government funds wolf management activities, including enforcement

Chairman Wright stated that he would like some time to put together the resolution before bringing it to the Commission.

MISCELLANEOUS

Communication Strategies

Mike Keckler, Chief, Communications, reported that the Communications Bureau has been working to develop a Strategic Plan for the bureau. The plan includes strategic communications components designed to help Fish and Game become more proactive and focused in its outreach efforts. Mr. Keckler distributed a copy of the Communications Response Assessment (Appendix 43, Exhibit 90) and the new *Idaho Fish & Game News* in its new format (Appendix 43, Exhibit 91). Mr. Keckler provided the Commissioners a copy of the draft Management Direction (Appendix 43, Exhibit 92) that will be included in the Department Strategic Plan.

RULES

Rule Clarification Wild Turkey IDAPA 13.01.09-100.a

Sharon Kiefer, Assistant Director, presented the rule clarification.

Background: In May, 2007, staff presented a recommendation to the Commission to expand fall turkey hunting opportunity in designated Panhandle units with a goal to find an equilibrium where public hunting is sustainable and conflicts on private lands were reduced.

A component of the expanded opportunity was a recommendation for additional “special unit turkey tags” as follows:

- Purpose: Harvest more birds in units with abundant winter flock management needs.
- Proposed: New “Unit” tag specific to Units 1, 2, 3 & 5 during Fall 2007
- Proposed: Purchase up to three Unit tags.
- Proposed: Price for Unit tag in 2007:

- **\$5.00** per tag including vendor fee for Idaho residents.

The following are the recommendations reflected in the Commission minutes regarding the special unit tags; these recommendations were adopted by the commission in a unanimous vote:

- Department Recommendation: Extend fall season to December 15 in Units 1, 2 (except Farragut State Park and Farragut WMA), 3, 4, 4A, 5, and 6
- Department Recommendation: Create a fall general season turkey tag valid for units 1, 2, 3 and 5. Price of tag would be \$5.00, including the vendor fee for Idaho residents. Hunters would be able to purchase up to 3 of these tags.

Staff Recommendation: Clarify turkey tag rule as follows:

03. Wild Turkey. No person shall hunt wild turkey without having in his or her possession the appropriate hunting license, tag, and controlled hunt permit. Persons obtaining and using tags, stamps, and permits must comply with the following requirements:

a. There are three (3) turkey tags available each calendar year. These are the general tag, extra tag, and special unit tag. Only three (3) turkey tags of the following may be purchased each year; general and extra. In addition to the previously mentioned three (3) turkey tags, three (3) special unit tags may also be purchased. Special unit tags are only valid for resident hunters. A hunter may not obtain both a spring general and a spring controlled turkey tag during the spring.

10-85 Commissioner McDermott moved and Commissioner Power seconded a motion to allow nonresidents as part of the rule, therefore no change to the rule and reject the department recommendation and leave the rule the way it stands. The motion carried in a unanimous vote.

Commissioner Budge was out of the room and did not vote.

LEGISLATIVE

Legislative Update

Sharon Kiefer, Assistant Director, stated that the Commission approved the special big game auction tag as a legislative idea in July and also requested draft legislation for the special big game auction tag for their review prior to submission for the legislative process. The draft legislation was included in the agenda packet to the Commission. Elements included in the rule will be that 10% of all proceeds for the tag may be retained by the organization for administrative fees, and notation in the legislative language proposal as to the actual allocations of the revenue and purpose. Consensus from the Commission is to proceed with this legislative process.

Ms. Kiefer provided an update about the status of Governor Office approval for the Commission approved legislative ideas. The following four legislative ideas have been approved, revise allowable sales of wildlife or parts thereof, create big game auction/lottery tags for existing and new big game species, restrict collection of wildlife from the wild without a permit, and

authority to create a mentored hunting program. We are still waiting to hear about the Access permit and fees for designated Department lands. Any approved ideas must be electronically submitted in legislative format, including a fiscal note and statement of purpose by September 17 for final approval by the Governor's Office.

Director Groen noted that the proposal for the Access permit and fees for designated Department lands is a very important funding bill.

REPORT

Issue Bighorn Sheep Management Plan for Public Comment

Hollie Miyasaki, Regional Wildlife Biologist, presented the draft Bighorn Sheep Management Plan to the Commission (Appendix 43, Exhibit 93). Revision of the Idaho Bighorn Sheep Management Plan 1990-1995 began in 2008. Regional personnel from around the state formed a team to develop the new plan. Scoping letters were sent to other agencies, organizations, counties, and others; responses were used to help define management issues to address in the plan. Additional input from the Governor's Idaho Bighorn Sheep-Domestic Sheep Advisory Group was used as the Department developed this draft for Commission review.

Species management plans represent Commission policy and provide guidance to the Department on implementing management actions and developing rule recommendations. This Statewide Bighorn Sheep Management Plan is specifically identified in Idaho Code 36-106(e)5(E), which requires IDFG to "... develop a state management plan to maintain a viable, self-sustaining population of bighorn sheep in Idaho"

The staff recommendation is to release the draft "Idaho Bighorn Sheep Management" Plan for public comment.

10-86 Commissioner Barowsky moved and Commissioner Wheeler seconded a motion to release the draft Idaho Bighorn Sheep Management Plan for public comment. The motion carried in a unanimous vote.

LANDS

Williams Stream Restoration Acquisition

Jeff Gould, Chief, Wildlife, presented the land acquisition for the Williams Stream restoration. Mr. Gould reported that this is an acquisition of 11 acres along the Portneuf River 2.5 miles west of Lava Hot spring in the Southeast Region. The Williams Stream restoration is a cooperative effort for public access and restoration work to improve fishery and wildlife habitat as well as water quality. IDFG is cooperating with Department of Environment Quality, U.S. Forest Service, Southeast Idaho Flyfishers, and the Carriboo Conservancy on the acquisition and IDFG will hold title. The Williams parcel would provide access to 2,600 feet of Portneuf river frontage. This property was previously presented to the Commission during Executive Session in January 2010.

Total cost is \$29,655 and the IDFG portion is \$7,000 from Fisheries fund. FILT is estimated at \$6 annually. Operating and maintenance costs are estimated at \$5,000 initially and \$500 annually.

10-87 Commissioner Budge moved and Commissioner Trevey seconded a motion to proceed with the Williams Stream land acquisition. The motion carried in a unanimous vote.

RULES

Season Setting: Modification of Fishery Boundaries for Fall Chinook

Ed Schriever, Chief, Fisheries, presented the proposal (Appendix 43, Exhibit 94) to modify the boundaries of the 2010 fall Chinook Salmon fishery to include a portion of the lower mainstem Clearwater River. This agenda item concerns a modification of boundaries for the 2010 a fishing season for fall Chinook salmon that was approved by the Idaho Fish and Game Commission on July 8, 2010. During the 2009 fishery for fall Chinook salmon, staff observed that hatchery fish destined for the Snake River appeared to seek out the cooler waters of the Clearwater River as a thermal refuge early in the season until the water temperate in the Snake River declined. When staff briefed the Commission in July about the 2010 Fall Chinook season setting proposal, they indicated that they would likely propose opening waters of the lower Clearwater River pending consultation with the Nez Perce Tribe about any biological or allocation concerns. That consultation has occurred and the Nez Perce Tribe made no formal objections to opening the waters of the lower Clearwater to retention of adipose fin-clipped adult and jack fall Chinook salmon, with seasons and limits consistent with those in the previously approved fishery in the Snake River. This proposal defines the harvest rules, methods of take, licenses and permits requirements, and season for the waters of the Clearwater River included within the boundary modifications.

10-88 Commissioner Trevey moved and Commissioner Barowsky seconded a motion to accept the Department recommendation to modify the boundaries of the 2010 fall Chinook salmon fishery to include a portion of the lower mainstem Clearwater River. The motion carried in a unanimous vote.

Commission Direction Wolf Management

Chairman Wright stated that the last issue of the day will be the Commission's consideration of the resolution regarding Idaho's position and plans for the future of wolf management in the state of Idaho. The draft resolution has been put together and ready for review. Commissioner Budge distributed a copy of the proposed resolution to the Commission. Commissioner Budge stated that the first 15 recitals are verbatim from the resolution adopted at the August 17, 2009 meeting.

Commissioners discussed and made suggestions for the proposed resolution (Appendix 43, Exhibit 95).

10-89 Commissioner Budge moved and Commissioner McDermott seconded a motion that Commission adopt his resolution and the associated recitals regarding wolf management in the state of Idaho. The motion carried in a unanimous vote.

MISCELLANEOUS

Adjournment

10-90 Commissioner Barowsky moved and Commissioner McDermott seconded a motion to adjourn. The motion carried in a unanimous vote.

The meeting adjourned at 5:27 p.m.

Wayne Wright, MD
Chairman

Cal Groen
Secretary