October 19, 2015

Anna Frostic, Senior Attorney
c/o Dan Paul, Washington State Director
The Humane Society of the United States
1037 NE 65th Street #186
Seattle, WA 98115

Dear Ms. Frostic and Mr. Paul:

On September 21, 2015, my office received the petition you filed following the Washington Fish and Wildlife Commission’s (Commission) August 27, 2015, denial of your petition to amend WAC 232-28-297. Under RCW 34.05.330(3), I may consider appeals from petitions to amend or repeal existing administrative rules; I will only reverse an agency decision if I find that the agency abused its discretion or misapplied state law.

You specifically contend that your proposed rule amendment is necessary because the Commission, in raising the cougar harvest rate through a last-minute amendment to its own proposed rule, improperly applied the Washington Administrative Procedure Act by implementing a rule that is substantially different than the Commission’s proposed rule. I agree. Because the effects of the Commission’s amended cougar harvest rate rule substantially differ from the effects of the proposed rule, I am directing the Commission to amend WAC 232-28-297 and restore the harvest rate to the level in the proposed rulemaking. I will further direct the Commission to open a public comment period on the amended proposal to increase the cougar harvest rate, so that citizens have a meaningful opportunity to participate in their government’s decisions.

Here, the Commission’s proposed rule included a 12-16 percent cougar harvest rate, the same rate that has been in effect since the 2012-2013 season. The Commission stated the purpose of the proposed rule: “The harvest guideline represents a sustainable 12-16 percent harvest rate for each hunt area. The anticipated effects to the cougar population are to maintain a stable population and to maintain an adequate age structure for cougar populations equally distributed across the state.” The Commission expressly listed the reasons supporting the proposed rule:

_Recently published studies suggest that a 12-16 percent harvest rate of a local cougar population is the maximum harvest rate that still has a high probability for maintaining a stable cougar population along with stable adult male territorial behavior. Harvest rates in excess of 16 percent can result in declines_
in core populations of breeding females, and excessive male harvest rates result in the loss of adult male territorial [behavior], which acts as a regulatory mechanism for local male cougar numbers.

Given the Commission’s reasoning for the proposed rule, the public would have had little notice that any final rule would include a harvest rate exceeding the described “maximum” 12-16 percent rate. The Commission’s stated reasons for the proposed rule imply that any harvest rate above 12-16 percent would threaten the stability of the state’s cougar population, which would be contrary to the Commission’s goals. Consequently, the public could not have reasonably anticipated that the adopted rule would include a harvest rate beyond the “maximum” rate articulated and justified in the proposed rule; in turn, the public had no opportunity to comment on a rate potentially exceeding 12-16 percent.

Transparency and openness in state government are essential in order to maintain the trust of the public. Because the effect of the Commission’s last-minute amendment to the proposed rule substantially differed from the proposed rule, I am directing the Commission to amend WAC 232-28-297 and restore the harvest rate to the level in the proposed rulemaking, and I am also directing the Commission to open a public comment period, pursuant to APA requirements, regarding the amended proposal to increase the cougar harvest rate. Only after engaging in the APA-required procedures may the Commission change the cougar harvest rate.

Sincerely,

Jay Inslee
Governor of Washington