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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 635

DEPARTMENT OF FISH AND WILDLIFE

FILED

07/21/2023 12:54 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Derby Prohibition for Taking Unprotected Mammals

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 09/15/2023 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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Filed By:

Roxann Borisch

Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 09/15/2023

TIME: 8:00 AM - 5:00 PM

OFFICER: ODFW Commission

HEARING LOCATION

ADDRESS: 7th Mountain Resort, 18575 SW Century Drive, Bend, OR 97702

SPECIAL INSTRUCTIONS:

All or portions of this hearing may be conducted virtually. Information will be posted on our website at <https://www.dfw.state.or.us/agency/commission/minutes/>

NEED FOR THE RULE(S)

The Commission denied a petition received from fifteen non-government organizations to undertake rulemaking process to prohibit coyote killing contests in Oregon at their December 2022 meeting. As part of the motion, the Commission directed staff to work with the Department of Justice to draft administrative rules, consistent with the Commission's authority, for consideration of addressing the general concerns with taking wildlife as part of a derby. The proposed rule changes are completing the request and opening the public comment process.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

1. Staff report prepared for the Oregon Fish and Wildlife Commission hearing on 09/15/2023.

A copy of the rules and the other documents relied upon for this rulemaking [the above document(s)] are available from the Oregon Department of Fish and Wildlife, Wildlife Division, 4034 Fairview Industrial Drive SE, Salem, Oregon

97302-1142. Contact Roxie Borisch at 503-947-6314 or roxann.b.borisch@odfw.oregon.gov to view by appointment between the hours of 8:00 a.m. and 4:00 p.m., on normal working days, Monday through Friday.

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

The Department has solicited input from representatives of underrepresented communities likely to be affected on whether the proposed rule will have a fiscal impact on the community, the extent of the fiscal impact, and whether the rules will have significant impact on underrepresented communities. <https://www.dfw.state.or.us/OARs/index.asp>

FISCAL AND ECONOMIC IMPACT:

The proposed rules are not expected to have impact because the ability for landowners to deal with agricultural damage caused by statutorily defined “predatory animals” is still allowed with participants being agents of the landowner(s).

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s).

The proposed rules are not expected to affect state agencies or local government; any previous public participation taking wildlife associated with proposed rules would need to follow specific provisions of the statutes regulating take of predatory animals (ORS610.105).

Impacts to the Oregon State Police (OSP) for additional enforcement efforts related to hunting derbies are not anticipated, however OSP may occasionally conduct enforcement activities related to derbies conducted for the purpose of taking predatory animals pursuant to ORS610.105.

(2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); Minimal impacts are expected with very minimal loss of economic travel related revenue in the few rural communities that previously hosted open participation in a small number of events. ODFW does not have information to determine how many derbies occur in Oregon annually or the number of derby participants. There is currently no reporting requirement for derbies, so the Department’s awareness is limited reports from the public or local advertising.

(b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s);

None expected

(c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

These types of compliance costs are not anticipated to result from the proposed rules.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Topic has previously been discussed at Oregon Fish and Wildlife Commission meetings and public correspondence and

testimony was accepted into record. This concept has also been previously introduced by legislators in previous legislative sessions.

WASAN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

An Administrative Rules Advisory Committee was not consulted. These concepts were discussed at the December 2022 Oregon Fish and Wildlife Commission meeting where public correspondence and testimony was accepted into the record. The Commission gave direction to Department staff to bring back draft rules for consideration on the issue.

RULES PROPOSED:

635-050-0050, 635-050-0060, 635-050-0300

AMEND: 635-050-0050

RULE SUMMARY: The Department is proposing the adoption of new administrative rules to prohibit taking unprotected mammals native to Oregon as part of a derby.

CHANGES TO RULE:

635-050-0050

Definitions ¶¶

(1) "Derby" means a manner of take involving a competition, tournament, contest, or other event that has the objective of killing unprotected mammals native to Oregon for cash, prizes, or other incentives. ¶¶

(2) "Eastern Oregon" means all counties east of the summit of the Cascade Range, including all of Klamath and Hood River Counties. ¶¶

(23) "Furbearers or furbearing mammals" means beaver, bobcat, fisher, marten, mink, muskrat, river otter, raccoon, red fox, and gray fox. For any person owning, leasing, occupying, possessing or having charge of or dominion over any land (or an agent of this person) who is taking or attempting to take beaver or muskrat on that property, these two species are considered to be predatory animals. ¶¶

(34) "Killing trap" means a device used to kill a mammal as part of a killing trap system. A killing trap system is a system set with the intent to kill a mammal comprising a combination of: equipment (the trap and trigger configuration), and set (including site modifications, lures, baits, location and other relevant requirements). ¶¶

(45) "Land set" is any set with a trap or snare other than a water set. ¶¶

(56) "Predatory animals" means coyotes, rabbits and rodents which are or may be destructive to agricultural crops, products and activities. ¶¶

(67) "Public trail" is any trail designated, maintained, mapped and marked by any state or federal land management agency on the most current official map of the agency; for the purposes of trapping, water way, water trails designated for floating craft and public roadways are not considered a "public trail". ¶¶

(78) "Raw pelt" means any pelt that has not been processed or converted to any usable form beyond initial cleaning, stretching, and drying. ¶¶

(89) "Resident" is any person who: ¶¶

(a) Has physically resided in Oregon for not less than six consecutive months immediately prior to the date of making application for a license, tag, or permit. ¶¶

(b) Members of the uniformed services of the United States who: ¶¶

(A) Are permanently assigned to active duty in this state, and their spouse and dependent children. ¶¶

(B) Reside in this state while assigned to duty at any base, station, shore establishment or other facility in this state. ¶¶

(C) Reside in this state while serving as members of the crew of a ship that has an Oregon port or shore establishment as its home port or permanent station. ¶¶

(D) Resides in another state or a foreign country and establishes Oregon residency by filing Oregon state income taxes no later than 12 months before leaving active duty. ¶¶

(E) A member of the uniformed services who is not a resident member of the uniformed services, except for the purpose of purchasing controlled hunt tags issued by the commission. ¶¶

(c) Aliens attending school in Oregon under a foreign student exchange program. ¶¶

(d) Resident does not include a person:¶¶

(A) Who merely owns real property or pays property taxes in this state; or¶¶

(B) Who claims resident privileges in another state or country for any purpose.¶¶

(910) "Restraining trap" means a device used to capture and restrain (but not kill) a mammal as part of a restraining trap system. A restraining trap system is a system set with the intent to capture and restrain (but not kill) a mammal comprising a combination of: equipment (the trap and the trigger configuration), and set (including site modifications, lures, baits, location and other relevant requirements). ¶¶

(101) "River" means that portion of a natural water body lying below the level of bankfull stage. Bankfull stage means the stage or elevation at which overflow of the natural banks of a stream or body of water begins to inundate the upland.¶¶

(112) "Sight bait" means exposed flesh bait, including whole animal carcasses, within 15 feet of any foothold trap set for carnivores.¶¶

(123) "Trailhead", for the purposes of trapping, is the area beginning at the sign marking the origin of a public trail or segment of trail which is designated, maintained, mapped, and marked by at least one visible sign and includes any adjacent improved graveled or paved vehicle parking lot. The standard shoulder of the road is not considered part of the trailhead. Trailheads are marked by at least one visible sign posted by the responsible state or federal land management agency and identified on the most current official map of the agency. A trailhead does not include junctions between trails (posted or not) where there is no motorized vehicle access, or intersections where a trail crosses a road, or locations where users have developed an access point, but no improvements have been provided beyond minimal signage for public safety.¶¶

(134) "Unprotected mammals" means, for the purposes of OAR 635-050-0015 through 635-050-021300, badger, coyote, gophers (*Thomomys bottae*, *T. bulbivorus*, *T. mazama*, *T. talpoides* and *T. townsendii*), moles (*Scapanus townsendii*, *S. orarius* and *S. latimanus*), mountain beaver (*Apolodontia rufa*), yellowbellied marmots (*Marmonta flaviventris*), nutria, opossum, porcupine, spotted skunk, striped skunk, and weasel. For any person owning, leasing, occupying, possessing or having charge of or dominion over any land (or an agent of this person) who is taking or attempting to take coyote, gopher, mountain beaver (boomer), marmot, nutria, or porcupine on that property, these six species are considered to be predatory animals.¶¶

(145) "Water set" is any trap or snare originally set within a permanent water source or a seasonal water source when water is present, such that at least a portion of the trap jaws or snare loop is submerged. If water levels fluctuate, then at each required trap-check any killing trap with a jaw spread of 7.5 inches or more originally set in a water set must be removed or adjusted such that at least a portion of the trap jaws or snare loop is submerged except in tidally influenced areas when set below the mean high water mark.¶¶

(156) "Western Oregon" means all counties west of the summit of the Cascade Range except Klamath and Hood River Counties.

Statutory/Other Authority: ORS 496.012, 496.138, 496.146, 496.162

Statutes/Other Implemented: ORS 496.012, 496.138, 496.146, 496.162, 497.002, 497.006

AMEND: 635-050-0060

RULE SUMMARY: The Department is proposing the adoption of new administrative rules to prohibit taking unprotected mammals native to Oregon as part of a derby.

CHANGESTO RULE:

635-050-0060

Times, Places, Bag Limits, Species, Sex, and Manner of Taking ¶

Each species of furbearing or unprotected mammal may be hunted or trapped only during the times and in the places, quantities, and manner specifically provided for in OAR 635-050-0015 through 635-050-021300.

Statutory/Other Authority: ORS 496.012, 496.138, 496.146, 496.162

Statutes/Other Implemented: ORS 496.012, 496.138, 496.146, 496.162

ADOPT: 635-050-0300

RULE SUMMARY: The Department is proposing the adoption of new administrative rules to prohibit taking unprotected mammals native to Oregon as part of a derby.

CHANGES TO RULE:

635-050-0300

Derby Prohibition

(1) It is unlawful to organize, sponsor, conduct or participate in a derby that has the objective of killing unprotected mammals native to Oregon.¶

(2) This rule shall not apply to deny the right of any person to control predatory animals as provided in ORS 610.105.

Statutory/Other Authority: ORS 496.012, 496.138, 496.146, 496.162

Statutes/Other Implemented: ORS 496.012, 496.138, 496.146, 496.162