

Meeting Date: November 16, 2023

Agenda Item No. 5A

Agenda Item: Administrative Rules: Adoption of Pending Rules (Action) and Legislative Update (Information only)

Bureau Chief Approval: JF

Prepared by: Deputy Director Amber Worthington

Background:

The Commission previously approved four Zero-Based Regulation (ZBR) chapters of IDAPA rules this year to move to proposed and are now reviewing those chapters to adopt as pending:

- **13.01.06** - Rules Governing Classification and Protection of Wildlife
- **13.01.11** - Rules Governing Fish
- **13.01.12** - Rules Governing Commercial Fishing
- **13.01.15** - Rules Governing the Use of Dogs

In addition to ZBR rulemaking, the Commission adopted two proposed rules that will also need to be reviewed to adopt as pending:

- **13.01.04.500** was brought by staff to address necessary changes to align with the Legislative Session 2023 adoption of chapter 13.01.04.506, Rules Governing Licensing - Deer and Elk Tag Allocation in General Hunts Limited for Nonresident Only. The rule change makes the set-aside align with the outfitter tag allocation and only requires one Commission action.
- **13.01.08, Section 406** - Rules Governing Taking of Big Game Animals: Special Weapons Season – Muzzleloader originated from Commission-directed rulemaking.

Statutory Authority and/or Policy Issues:

Idaho Code 36-104 grants authority to the Commission to set seasons and promulgate IDAPA rules. Additionally, these actions are authorized pursuant to Sections 36-103, 36-104, 36-105, 36-111, 36-401, 36-408, 36-409, 36-409, 36-412, 36-418, 36-701, 36-703, 36-704, 36-706, 36-708, 36-712, 36-1102, 36-1101(a), 36-1508, 36-2201, and 36-2205. Idaho Code 67, Chapter 52 (Idaho Administrative Procedure Act) governs the process for considering, adopting, and implementing IDAPA rules. Idaho Code 67-5224 provides for adoption of pending rules for additional public notice and comment.

Public Involvement Process:

Public involvement for rulemaking occurs through Commission meetings, negotiated rulemaking and the publication of temporary/proposed rules in the Administrative Bulletin. Consistent with Executive Order 2020-01 for ZBR, at least two public meetings were held (including the opportunity for one negotiated rulemaking meeting) to take input on the “zero-based” Fish and Game chapters 6, 11, 12 and 15, in the Idaho Administrative Code (IDAPA 13), which were opened for review and modification in year three of the five-year ZBR effort. Rulemaking meetings were also held for the one proposed rule brought to the Department by Commission direction.

Staff received very little feedback or comments on the modified ZBR chapters until after the proposed rules were published in the Administrative Bulletin. Since the rules were published, staff logged several comments around confusion in the changes to chapter 13.01.15, Rules Governing the Use of Dogs and has revised the rule language to clarify any misunderstandings.

No additional comments were received around chapter 13.01.04.500.

Staff received a multitude of comments during the public comment period around chapter 13.01.08.406, Rules Governing Taking of Big Game Animals: Special Weapons Season – Muzzleloader and opted to have one additional public meeting to address the comments to reach consensus. The revised rule language reflects staff effort at refining the rule and any disagreements that arose from comments and the meeting.

The revised rule language for the Commission’s consideration for the four ZBR chapters and the two other rules is up for adoption for pending status and if approved will move to be heard and approved by the Legislature in session 2024.

Justification:

Idaho Code (Idaho Administrative Procedure Act) governs the process for considering, adopting, and implementing IDAPA rules.

Staff Recommendation: The staff recommendation for pending rule language is presented by chapter in the following pages. These include pending rules for:

- 13.01.04, Rules Governing Licensing (individual rule section)
- 13.01.06, Rules Governing Classification and Protection of Wildlife
- 13.01.08, Rules Governing Taking of Big Game Animals (individual rule section)
- 13.01.11, Rules Governing Fish
- 13.01.12, Rules Governing Commercial Fishing
- 13.01.15, Rules Governing the Use of Dogs

Sample Motions:

Pending Rules: I move the Commission adopt pending rules as presented, with authority for the Department to make non-substantive edits in the proofreading process that do not alter the sense, meaning or effect of the rules.

Background (Legislative Update):

Staff will review the Commission legislative process, including regular conference calls during the legislative session to evaluate legislative proposals related to fish and wildlife management, Department administration, and other relevant items. Last year, calls occurred on Thursday mornings at 9 a.m. MST, when staff provided the Commission with a summary of legislation and bill status. The weekly calls provide the Commission with the opportunity to determine whether a policy position is warranted.

A staff legislative analysis sheet and proposed House and Senate bill tracking forms proposed for use during the 2024 session are attached for consideration.

The Department has no agency-sponsored legislation proposed for the 2024 Legislative Session.

Statutory Authority and/or Policy issues:

The Commission has responsibility to provide policy direction for Department-sponsored legislation and provide policy guidance relative to other legislative initiatives and process, including issues the Commission has worked with other stakeholders to advance.

Public Involvement Process:

Commission quarterly meetings provide the public with comment opportunities regarding ideas for agency-sponsored legislation which follows a process and schedule determined by the Governor’s office. The legislative process also provides the public a separate opportunity to comment to their elected representatives on the merits of legislation.

Staff Recommendation:

Continue a process similar to what was conducted in previous years that evaluates legislative proposals as directed by the Commission, including establishing the 2024 teleconference calendar (e.g., day of week, time of conference call, frequency of calls). Direct staff to initiate support work to implement the Commission legislative process. Begin calls the 8th of February 2024.

Justification:

Define the Commission’s legislative process to facilitate timely and effective policy input during the 2024 legislative session.

IDFG LEGISLATION ANALYSIS

Date:

Completed By:

Bill – RS#:

Sponsors and Interested Parties:

<u>Name</u>	<u>Phone #</u>	<u>E-mail</u>

Current Law/Background:

Synopsis/Analysis:

Effects to Department Management/Wildlife Resources:

Fiscal Effect to Department:

Bill Status:

Department Action Recommendation: ___ Monitor ___ Answer Qs ___

Testify

Justification:

Commission Position: ___ No Position ___ Support ___ Not Support

___ Monitor

Comment:

This analysis is provided for information purposes only. It represents only the informed analysis of this legislation by the appropriate Department subject matter expert. It does not constitute official policy of the Idaho Fish and Game Commission or the Idaho Department of Fish and Game, unless formally adopted by the Commission; nor is it a legal opinion in reference to this legislation.

2024 Legislative Session- All Bills- Status as of X/XX

Click on the link below for complete bill information and up-to-date bill status
 Link to be provided when available

BILL #	DESCRIPTION	IDFG Commission Position	House Committee*	House Floor	Senate Committee*	Senate Floor	Governor action
S1237	Administrative Rules	Monitor	Jud, Rules & Admin	Passed 32-3-0	Jud and Rules		

*Res/Env= Senate Resources and Environment Committee, Res/Con= House Resources and Conservation Committee