

Meeting Date: August 19, 2013

Agenda Item No. 8

Agenda Item: Nonresident Jr. Mentor Tag Rule
Amendment (**Action**)

Bureau Chief Approval: _____

Prepared by: Jeff Gould

Background:

Annually or biennially, the Idaho Fish and Game Commission considers proposed changes for two types of hunting rules, season setting (biological) and IDAPA rules (nonbiological). Examples of IDAPA rules include methods of take, tagging requirements, evidence-of-sex requirements, and controlled hunt eligibility requirements. IDAPA rules are officially published in the Idaho Administrative Code (<http://adm.idaho.gov/adminrules/agyindex.htm>) and included in hunting regulation brochures. Any IDAPA rules must be published in the Administrative Bulletin for public comment and must be upheld by the Legislature to become a final rule.

Recent legislation (SB 1366, 2012) strengthened the requirement for consideration of negotiated rulemaking to adopt, amend, or repeal a rule. In short, the agency shall determine whether negotiated rulemaking is feasible or not, and proceed according to statutory procedures identified in 67-5220 (Idaho Code).

Based on input from sportsmen, Department staff prepared draft rule language and filed the Notice of Intent to promulgate rules on June 7, 2013, for the following:

Rule	Intent	NOI Date	Comment Period
1. Nonresident junior mentored tags—require mentor to have tag for species but not same area	improves youth participation and recruitment efforts	June 7	July 3-24

Statutory Authority and/or Policy issues:

Idaho Code 36-104 grants authority to the Commission to set seasons and promulgate IDAPA rules. Idaho Code 67-52 (Idaho Administrative Procedure Act) governs the process for considering, adopting, and implementing IDAPA rules.

Public Involvement Process:

The proposed rule was scoped via the Department website and published in the Administrative Bulletin. Four individuals provided comments during the 21-day comment period.

Justification:

Commission action is required to modify IDAPA Rules.

Staff Recommendation:

Based on the supportive public comments received during the comment period, the Department determined negotiated rulemaking is not feasible because the amendment is simple and lacks issues. The Department recommends moving directly to temporary and proposed rulemaking due to the conferring benefit to youth and mentor hunters.

Proposed implementation plan:

1. Adoption by Commission in August 2013
2. Advertise rule change for 2013 hunting season (temporary rule)
3. Legislative approval, Jan-Mar 2014 (proposed rule)
4. Advertise rule change for 2014 hunting seasons

Action Requested:

Staff recommends the Commission adopt the Nonresident Jr. Mentor Tag Rule amendment as follows:

PROPOSED AMENDMENT: IDAPA 13.01.08.250.01.h. Any adult accompanying the holder of a Nonresident Junior Mentored Tag must have a tag for the same species; ~~valid in the same area.~~

Suggested Motion: The Commission adopts the proposed rule amendment to the Nonresident Jr. Mentor Tag Rule as a temporary and proposed rule.

Short-Term Schedule for Rulemaking

Announce Rule Making Schedule to Regions (WL Chief)	December 1, 2012
Regional Deadline to Submit Proposals (Regional Supervisors)	March 1, 2013
HQ Review to Determine Status of Proposals (Deputy Director, WL/Enforcement Chiefs)	March 15, 2013
Commission Briefing on Rule Proposals (WL Chief)	March 16, 2013
Inception-Decision to Initiate Rulemaking, Determine Course of Action ⁱ -Negotiated or Formal, Assign IDFG Contact for Comments (Deputy Directors, WL/Enf Chiefs, Asst Chief)	April 23, 2013
Agency submits PARF to DFM (Legal)	May 3, 2013
Prepare Negotiated Rulemaking ⁱⁱ and/or Formal Rulemaking ⁱⁱⁱ Proposals for Commission Review (WL Chief)	May 10, 2013
Commission Briefing on Rule Status (WL Chief)	May 16, 2013
File NOI to Promulgate a Rule ⁱⁱ (Legal)	June 7 (Rules 1-2), July 5 (Rule 3)
Publish NOI in Administrative Bulletin, Maintain Record of Rulemaking on IDFG Website ^{iv} (Communications Manages Website)	July 3 (Rules 1-2), August 7 (Rule 3)
Comment Period Closes	July 24 (Rules 1-2), August 28 (Rule 3)
IDFG Contact Summarizes Public Comments and Recommends feasibility and a Rulemaking Schedule ^v (Appointed Contact-TBD)	July 31 (Rules 1-2)
Approve Negotiated Rulemaking Schedule and/or Proceed Directly to Formal Rulemaking (Deputy Directors, WL/Enf Chiefs, Asst Chief, Legal)	August 2 (Rules 1-2)
Goldsheets Prepared for Commission Meeting	August 7, 2013
Commission Action- Affirm Course of Action for Negotiated Rulemaking and/or Adopt Temporary and Proposed Rules as Recommended (WL Chief)	August 19, 2013
Initiate 21-Day Comment Period for Rules the Commission Adopted (Legal) with publication in Administrative Bulletin	August 30, 2013
2014 Legislative Review	January-February, 2014

ⁱ Consider the following: (1) Is there a need for temporary rulemaking? (2) What is the nature of the change being proposed? Is it a simple change? (3) Are the representative of affected interests easily identifiable? (4) Are the affected interests likely to reach a consensus on a proposed rule? Secondly, rulemaking that is being done to comply with state or federal law or a controlling judicial decision or court order cannot be negotiated.

ⁱⁱ Include (1) nontechnical statement of the subject matter, (2) principle issues involved, (3) purpose of the rule, (4) statutory authority for the rulemaking, and (5) draft rule to be considered

ⁱⁱⁱ Include why agency determined it was not feasible to conduct negotiated rulemaking

^{iv} If a draft of the rule has been prepared by the agency but has not been published, a copy of the text must be made available or provided to interested persons prior to the meeting. Post the text to the agency website.

^v If after posting NOI there is insufficient response by interested persons to the notice, the agency has sole discretion in determining the feasibility of scheduling and conducting negotiated rulemaking and may proceed directly to formal rulemaking.