

Meeting Date: April 11, 2017

Agenda Item No. 4

Agenda Item: Negotiated Rulemaking Update
(Update to March Meeting Agenda No. 12)

Bureau Chief Approval: 

Prepared by: Sharon W. Kiefer

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). The Commission has unique authority to establish seasons via proclamation, rather than through IDAPA rulemaking. Proclamations are published annually (i.e., Waterfowl) or biennially (e.g., Big game; Moose, Bighorn Sheep, and Mountain Goat; Upland Game) and include seasons, limits, size, sex, and harvestable species. IDAPA (nonbiological) rules include all other rules adopted by the Commission.

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 (<https://adminrules.idaho.gov/rules/current/index.html>) 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.

Legislation (SB 1366) in 2012 strengthened the requirement 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 Idaho Code 67-5220.

Wildlife staff will present a review of rule proposals for which we are proceeding with negotiated rulemaking for Proposed Rules. The 7 proposals that are being developed for negotiated rulemaking include:

Rule Proposal	Intent	Anticipated Dates for NOI, Comment Period, Commission Action
Nonresident Tag Limit and Outfitter Allocation in Unlimited Control Hunts	Create authority for non-outfitted nonresident tag limits in unlimited controlled hunts and to provide for outfitter allocation in unlimited controlled hunts	<i>Temporary Rulemaking Denied</i> File NOI: June 9 Published in Administrative Bulletin: July 5 21 day comment period: July 5 - 26 Commission action: August mtg, date TBD

Rule Proposal	Intent	Anticipated Dates for NOI, Comment Period, Commission Action
Bighorn sheep Auction and Lottery tags	Modify wording that restricts auction tag and lottery tag holders from hunting in "Unit 11" during alternate years to read "Hunt Area 11" to avoid having all 3 hunters (Controlled hunt drawing, Auction Tag, Lottery tag) from hunting in those portions of Hunt Area 11 that fall outside Unit 11 (i.e., Units 13, 18).	File NOI: June 9 Published in Administrative Bulletin: July 5 21 day comment period: July 5 - 26 Commission action: August mtg, date TBD
Allow use of bait for purpose of hunting wolves	Develop rules to allow use of bait to hunt wolves in Game Management Units to be set by Commission proclamation.	Request temporary rule-making authority. File NOI: June 9 Published in Administrative Bulletin: July 5 21 day comment period: July 5 - 26 Commission action: August mtg, date TBD
Eliminate requirement to call in to report wolf harvest within 72hrs of kill	Modify reporting requirement for wolf harvest to eliminate required 72hr call in to toll-free number. Retain existing mandatory physical check-in of skull and hide within 10 days of kill.	File NOI: June 9 Published in Administrative Bulletin: July 5 21 day comment period: July 5 - 26 Commission action: August mtg, date TBD
Prohibit use of livestream or other transmission of other real time imagery as aid to hunting big game	Develop rule to prohibit use of satellite or cellular real-time transmission of imagery (e.g., from remote trail camera) as an aid to taking big game animals.	File NOI: June 9 Published in Administrative Bulletin: July 5 21 day comment period: July 5 - 26 Commission action: August mtg, date TBD

Rule Proposal	Intent	Anticipated Dates for NOI, Comment Period, Commission Action
Prohibit electronic 2-way communication as an aid to taking big game	Develop rule to prohibit use of electronic communication (e.g., cellular phone call, texting, 2-way radio communication) as an aid to taking big game animals.	File NOI: June 9 Published in Administrative Bulletin: July 5 21 day comment period: July 5 - 26 Commission action: August mtg, date TBD
Revise provisions for Special Needs Big Game Hunt and Disabled Veteran Special Big Game Hunt tags	Develop rules to revise application process and to disallow hunts with 5 tags or less	File NOI: June 9 Published in Administrative Bulletin: July 5 21 day comment period: July 5 - 26 Commission action: August mtg, date TBD

Recommend rule “clean-ups” that do not require negotiated rulemaking such as rescission of section 270 in 13.01.08 (Mandatory School that is no longer implemented), and references to a draw for superhunt tags for early mandatory hunter report submission that is no longer implemented.

Department staff will prepare draft rule language and present to the Commission at their May 18, 2017, Commission meeting. The Department will file the Notice of Intent to promulgate these rules by June 9, 2017 for publication in the Administrative Bulletin on July 5. Based on public comments received by July 26, 2017 the Department will prepare recommendations to the Commission for action at their August meeting (date to be determined).

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:

Notices of Intent to initiate rulemaking will be published in the Administrative Bulletin and the proposed rules will be published and made available for public review and comment on the Department’s website during a 21 day period following publication. Following the public comment period, the Department will present final recommendations on the proposals for Commission action.

Justification:

Commission action is required to modify IDAPA Rules.

Staff Recommendation:

No action at this point.

Action Requested:

This item is for information only, no action is required.