

**Meeting Date: September 1, 2021**

**Agenda Item No. 1a, 1b**

**Agenda Item: Rulemaking**

**Bureau Chief Approval: JF**

**Department Sponsored**

**Prepared by:** Jim Fredericks

**Background:**

**Item 1.a:** The Department currently has one ongoing Negotiated Rulemaking related to the Outfitter set-aside for deer and elk tags. At their December 22, 2020 meeting, the Commission directed the Department to conduct Negotiated Rulemaking in response to a petition from the Idaho Outfitter and Guides Association. The petition requested the number of tags the Commission sets aside for use by outfitted hunters be set at 25% of the nonresident quotas for deer and elk tags, as opposed to a *maximum* of 25%.

Following an assessment of the number of tags required in the set aside to accommodate outfitter tag allocation in 2021 based historical verified use, and discussion with the outfitting industry and the Licensing Board, the Commission adopted a temporary rule in December, 2020 to increase the outfitter set-aside for elk tags from 2,400 to 2,800, to be effective for the 2021 tag allocation. The 400 tag increase was sufficient to cover elk tag allocation based on reported, verified use from the 2018 and 2019 hunting seasons and sufficiently addressed the issue for the 2021 season.

On September 1, the Commission will consider the 2022 deer and elk tag allocation. Outfitter tag allocations for the 2022 season will be based on historical, verified use from the 2019 and 2020 hunting seasons (i.e., updated use information). Using the updated, verified use numbers, the deer tag set-aside is sufficient to cover allocation. However, the 2,800 elk tag set-aside is slightly insufficient to accommodate allocation in newly limited zones based on updated, verified use. For that reason staff are proposing a temporary rule to increase the outfitter set-aside for elk tags from current (temporary) rule of 2,800 to 2,900. If adopted, this rule will expire sine die of the 2022 Legislative Session.

Department staff will continue the negotiated rulemaking process on this subject. A negotiated rulemaking meeting was held on March 31, 2021, and subsequent meetings have been held with both IOGA representatives (May 3, August 24) and individual outfitter interests (April 28). During those meetings, parties recognized the complexity of the issue and understood that increasing the set-aside to 25% may not affect the number of tags available to individual outfitters because of other limitations on non-residents and factors governing tag allocation and Board designation. There was a recognition that the temporary rule that increased the set-aside for elk was instrumental in making elk tags available for outfitter use. There was also a recognition that the improved reporting system, implemented in 2021, will provide much more reliable information to inform issues surrounding allocation and set asides. For that reason, staff recommend deferring additional action related to the petitioned rule change.

**Item 1.b:** On June 3rd, the Commission adopted omnibus fee and non-fee rules as temporary per direction from the Division of Financial Management (DFM) to be effective July 1st. DFM has recently issued direction to all state executive agencies to proceed with rulemaking to submit necessary rules for 2022 legislative review as an omnibus rulemaking. The Department is seeking Commission approval of all IDAPA Section 13 chapters (Fish and Game administrative rules), to

advance as proposed rules. Staff will review proposed changes to existing rule in Chapters 4, 7, 8, and 9. If approved, these changes would correct typographical errors, clarify points of confusion and/or make language across chapters consistent, provide for the use of crossbows as a method of take for upland game birds, and make minor adjustments to Geographical Management Units (GMUs) to better align with management and enforcement objectives. Staff also propose including the adjustment of the elk tags set-aside for outfitter allocation (above) in the omnibus package so it would remain effective beyond the 2022 Legislative Session. All other rules are unchanged from what was approved by the Commission on June 3rd.

Following publication of proposed rules and opportunity for public comment, the Commission may consider action on pending rules to submit for review by the 2022 Legislature.

**Statutory Authority and/or Policy issues:** These rulemaking actions comply with Section 67-5226, Idaho Code. These actions are authorized pursuant to Sections 36-103, 36-104, 36-105, 36-111, 36-201, 36-301, 36-303, 36-401, 36-404, 36-407, 36-408, 36-409, 36-412, 36-501, 36-504, 36-506, 36-701, 36-703, 36-704, 36-706, 36-708, 36-804, 36-901, 36-1101, 36-1102, 36-1508, 36-2201, Idaho Code.

**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 (Zero-Based Regulation, ZBR), at least two public meetings were held (including one negotiated rulemaking meeting) to take input on “zero-based” Fish and Game chapters 1, 7, and 9, in the Idaho Administrative Code (IDAPA 13), which were opened for review and modification in year-one of the five-year ZBR effort. Public involvement for changes to the outfitter set-aside also included negotiated rulemaking and other public comment opportunities. Omnibus rules approved to be advanced as proposed will be published in a special edition of the Idaho Administrative Bulletin on October 20, 2021, after which comments will accepted for 21 days.

**Staff Recommendation:** Staff recommends the Commission adopt fee and non-fee rules as proposed, consistent with the Commission’s prior omnibus rulemaking actions in February (fee) and May (non-fee) and June (both fee and non-fee). Because of differences in approval processes for adoption of fee and non-fee rules, these are separated into two different rulemaking actions.

**Sample Motions:**

**For Item 1.a** (temporary rule): *I move the Commission adopt a temporary rules adjusting the number of outfitter set-aside elk tags as presented by staff, with an effective date of September 1, 2021. Pursuant to Section 67-5226, Idaho Code, the Governor has found that temporary adoption of this rule is appropriate to confer a benefit on Idaho citizens. {Note: this Motion depends on the Governor’s office making this finding before the meeting}*

**For Item 1.b**

**(fee rules):** *I move the Commission adopt proposed fee rules as presented by staff, 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.*

**(Non-fee rules):** *I move the Commission adopt proposed non-fee rules as presented by staff, 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.*