

Meeting Date: May 10, 2018

Agenda Item No. 8

Agenda Item: Non-biological Rule Proposal briefing

Bureau Chief Approval: _____

Prepared by: Jon Rachael

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 for 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 formal (non-negotiated) or negotiated rulemaking for Proposed Rules. The proposals that are being developed for rulemaking include:

Rule Proposal	Intent	Anticipated Dates for NOI, Comment Period, Commission Action
Establish turkey LAP tags IDAPA 13.01.04	A Landowner Appreciation Program for turkeys would allow more hunting opportunity for landowners with important habitat in controlled hunt areas where hunting is limited and may increase social tolerance for turkeys on private land. Idaho Code §36-104(b)5(B) authorizes the Commission to establish additional turkey tags to landowners who provide valuable habitat, but rule language in IDAPA is needed for implementation.	<i>Formal Rulemaking; Proposed Rule.</i> Filing date for NOI: May 4 Publish in Administrative Bulletin: June 6 21-day comment period: June 6 – 27 Tentative Commission action: July 26

Rule Proposal	Intent	Anticipated Dates for NOI, Comment Period, Commission Action
Limit transport of cervid carcasses into Idaho from states with CWD. IDAPA 13.01.08, 13.01.10	<p>Create limitations on import/export and transportation of cervid carcasses to reduce risk of transmission of CWD. These rules are proactive measures to prevent potential transmission of CWD prions via infected cervid parts from other states where CWD has been detected, or from within a CWD management zone within the state if/when CWD is detected in Idaho.</p> <p>Implementing the rule in time for the 2018 harvest season would be a proactive benefit to reduce transmission risk.</p>	<p><i>Formal Rulemaking; Temporary and Proposed Rule.</i></p> <p>Filing date for NOI: May 4</p> <p>Publish in Administrative Bulletin: June 6</p> <p>21-day comment period: June 6 – 27</p> <p>Tentative Commission action: July 26</p>
Integrate CWD risk into consideration of emergency winter feeding decisions IDAPA 13.01.18	<p>Revise rule as recommended by IDFG Chronic Wasting Disease Strategy to integrate CWD risks into the conditions and criteria considered by IDFG and recommendations from Winter Feeding Advisory Committees for emergency feeding of deer, elk, and pronghorn.</p>	<p><i>Formal Rulemaking; Proposed Rule.</i></p> <p>Filing date for NOI: May 4</p> <p>Publish in Administrative Bulletin: June 6</p> <p>21-day comment period: June 6 – 27</p> <p>Tentative Commission action: July 26</p>
Restrict public from winter feeding deer and elk in designated CWD Management Zone. IDAPA 13.01.18	<p>This rule would restrict the public from feeding deer and elk in a designated CWD Management Zone in the state if/when we detect a positive CWD deer or elk. Winter feeding causes artificial concentrations of deer and elk that creates a high potential for disease transmission between animals and may increase the spread of CWD.</p>	<p><i>Formal Rulemaking; Proposed Rule.</i></p> <p>Filing date for NOI: May 4</p> <p>Publish in Administrative Bulletin: June 6</p> <p>21-day comment period: June 6 – 27</p> <p>Tentative Commission action: July 26</p>

Rule Proposal	Intent	Anticipated Dates for NOI, Comment Period, Commission Action
Prohibit use of natural cervid-based urine IDAPA 13.01.17.100	<p>Ban use of natural cervid (i.e., deer, elk) urine as a measure to reduce the probability of CWD prions from infected urine entering the environment. Synthetic substitutes may be used.</p> <p>There is benefit to applying the rule for the 2018 hunting season as a component of implementing Idaho's Chronic Wasting Disease strategy to reduce risk of CWD entering the state.</p>	<i>Negotiated Rulemaking; Temporary and Proposed Rule.</i> Filing date for NOI: May 4 Publish in Administrative Bulletin: June 6 21-day comment period: June 6 – 27 Tentative Commission action: July 26
Ban importation and possession of live mule deer, white-tailed deer, and moose in Idaho. IDAPA 13.01.10	<p>Rule revision is recommended to integrate consideration of CWD risks into the importation and possession of wildlife in Idaho to reduce probability of CWD prions being introduced into the state. This rule would ban importation and possession of ungulates that could be infected with CWD by denying necessary permits to import or possess live mule deer, white-tailed deer, or moose. The rule would not affect captive Cervidae under the authority of the Idaho Department of Agriculture.</p>	<i>Negotiated Rulemaking; Proposed Rule.</i> Filing date for NOI: May 4 Publish in Administrative Bulletin: June 6 21-day comment period: June 6 – 27 Tentative Commission action: July 26
Exclude transfer of moose, bighorn sheep, or mountain goat controlled hunt tag to minor child or grandchild IDAPA 13.01.08.260.01	<p>Prevent transfer of highly coveted controlled hunt tags for once-in-a-lifetime species from parent or grandparent to minor child or grandchild. There is a concern and perception that the current rule negatively impacts drawing odds for these tags because multiple parents or grandparents are applying for these hunts each year in hope of drawing a tag to designate to their child or grandchild. This behavior results in a disproportionate benefit to minors and disadvantage to adults hoping to draw a tag.</p>	<i>Negotiated Rulemaking; Proposed Rule.</i> Filing date for NOI: May 4 Publish in Administrative Bulletin: June 6 21-day comment period: June 6 – 27 Tentative Commission action: July 26

Rule Proposal	Intent	Anticipated Dates for NOI, Comment Period, Commission Action
SR., Disabled, NR DAV eligible to participate in second drawing for youth-only controlled hunts IDAPA 13.01.08.260	Provide an additional option for hunters with a Senior or Disabled combination license, or a nonresident Disabled American Veteran (DAV) hunting license by making them eligible to participate in any second application period for youth controlled hunt tags that were not drawn in the first drawing. These individuals are currently eligible to apply for any leftover youth controlled hunt tags that remain after the second drawing and are sold first-come, first-served.	<i>Negotiated Rulemaking; Proposed Rule.</i> Filing date for NOI: May 4 Publish in Administrative Bulletin: June 6 21-day comment period: June 6 – 27 Tentative Commission action: July 26
Revise trap set-back from trails IDAPA 13.01.16.400, 13.01.17.400	Revise minimum required distance for trap placement from the centerline of any maintained public trail to further reduce potential negative interactions with recreating public and domestic animals. Currently the distance for a ground, water, or other trap set is five feet from centerline. The rule revision may include additional criteria regarding flexibility related to type of set, trail aspects, and season.	<i>Negotiated Rulemaking; Proposed Rule.</i> Filing date for NOI: May 4 Publish in Administrative Bulletin: June 6 21-day comment period: June 6 – 27 Tentative Commission action: July 26
Use of Airguns for lawful take of big game animals IDAPA 13.01.08.410	Add airguns meeting certain technical criteria as a lawful method of take in Any-weapon and Short-Range Weapon-only seasons for big game animals.	<i>Negotiated Rulemaking; Proposed Rule.</i> Filing date for NOI: May 4 Publish in Administrative Bulletin: June 6 21-day comment period: June 6 – 27 Tentative Commission action: July 26

Department staff will discuss draft rule language at Commission meeting. The Department will file the Notice of Intent to promulgate these rules by May 4, 2018 for publication in the Administrative Bulletin on June 6. Based on public comments received during the June 6 – June 27 public comment period, the Department will prepare recommendations to the Commission at their July 26 meeting.

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.