

Dear Senators BAIR, VICK, Stennett, and  
Representatives RAYBOULD, Gestrin, Pence:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the  
Department of Fish and Game:

IDAPA 13.01.09 - Rules Governing the Taking of Game Birds in the State of Idaho - Temporary and  
Proposed Rule (Docket No. 13-0109-1501);

IDAPA 13.01.09 - Rules Governing the Taking of Game Birds in the State of Idaho - Proposed  
Rule (Docket No. 13-0109-1502).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the  
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research  
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative  
Services. The final date to call a meeting on the enclosed rules is no later than 10/28/2015. If a meeting is  
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis  
from Legislative Services. The final date to hold a meeting on the enclosed rules is 11/25/2015.

The germane joint subcommittee may request a statement of economic impact with respect to a  
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,  
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has  
been held.

To notify Research and Legislation, call 334-4834, or send a written request to the address on the  
memorandum attached below.



Eric Milstead  
Director

# Legislative Services Office

## Idaho State Legislature

*Serving Idaho's Citizen Legislature*

### MEMORANDUM

**TO:** Rules Review Subcommittee of the Senate Resources & Environment Committee and the House Resources & Conservation Committee

**FROM:** Principal Legislative Research Analyst - Katharine Gerrity

**DATE:** October 08, 2015

**SUBJECT:** Department of Fish and Game

IDAPA 13.01.09 - Rules Governing the Taking of Game Birds in the State of Idaho - Temporary and Proposed Rule (Docket No. 13-0109-1501)

IDAPA 13.01.09 - Rules Governing the Taking of Game Birds in the State of Idaho - Proposed Rule (Docket No. 13-0109-1502)

#### **1. IDAPA 13.01.09 - Rules Governing the Taking of Game Birds in the State of Idaho**

The Department of Fish and Game submits notice of temporary and proposed rule at IDAPA 13.01.09 - Rules Governing the Taking of Game Birds in the State of Idaho. According to the department, the purpose of the rule is to increase goose hunting opportunities in the Hagerman Valley and to help reduce goose conflicts with agricultural producers. The department notes that it closed several areas around the state to goose hunting decades ago to provide places for migrating populations to stop over where they wouldn't be hunted. The department states that the number of geese migrating through the Hagerman Valley has increased substantially over the last decade and closure is no longer warranted. The department adds that goose populations are starting to have a negative impact on agricultural operations. The department also clarifies that the rescission would not affect the Hagerman Wildlife Management Area Waterfowl Closure.

The department states that the temporary rule is appropriate because it confers a benefit. The temporary rule was effective on August 28, 2015. The department confirms that negotiated rulemaking was conducted. The rulemaking appears to be authorized pursuant to Sections 36-104 and 36-1101, Idaho Code.

#### **2. IDAPA 13.01.09 - Rules Governing the Taking of Game Birds in the State of Idaho**

The Department of Fish and Game submits notice of proposed rule at IDAPA 13.01.09 - Rules Governing the Taking of Game Birds in the State of Idaho. According to the department, the purpose of the rule is to allow one new method of take, that being crossbow, for forest grouse. The department adds that crossbow is already an approved method of take for certain big game species in general hunts, so the weapon allowance does not represent new weaponry or new technology.

Mike Nugent, Manager  
Research & Legislation

Cathy Holland-Smith, Manager  
Budget & Policy Analysis

April Renfro, Manager  
Legislative Audits

Glenn Harris, Manager  
Information Technology

The department states that negotiated rulemaking was not conducted due to the simple nature of the rule. The rulemaking appears to be authorized pursuant to Sections 36-104 and 36-1101, Idaho Code.

cc: Department of Fish and Game  
Dallas Burkhalter

## IDAPA 13 - IDAHO DEPARTMENT OF FISH AND GAME

### 13.01.09 - RULES GOVERNING THE TAKING OF GAME BIRDS IN THE STATE OF IDAHO

#### DOCKET NO. 13-0109-1501

#### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** The effective date of the temporary rule is August 28, 2015.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 36-104(b) and 36-1101(a), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2015.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The purpose of the temporary and proposed rule is to increase goose hunting opportunities in the Hagerman Valley and to help reduce goose conflicts with agricultural producers. This will benefit both hunters and agricultural producers. Decades ago the Department closed several areas around the state to goose hunting to provide migrating goose populations place to stop over where they wouldn't be hunted. The number of geese migrating through the Hagerman Valley has increased substantially over the past decade and a closure is no longer warranted. Additionally, geese are starting to have a negative impact to agricultural operations within the closed area. The temporary and proposed rule partially rescinds the goose hunting closure in the Hagerman Valley in Gooding and Twin Falls Counties. The rescission would not affect the Hagerman Wildlife Management Area Waterfowl Closure. The size of the rescission was reached through negotiated rulemaking.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1) (c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

Conferring a benefit.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased:

Not applicable.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

Not applicable.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the February 4, 2015 Idaho Administrative Bulletin, [Vol. 15-2, pages 19 and 20](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2) (a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Toby Boudreau (208) 324-4359.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 28, 2015.

DATED this 28th Day of August, 2015.

W. Dallas Burkhalter  
Deputy Attorney General  
Idaho Department of Fish and Game  
600 S. Walnut  
P.O. Box 25  
Boise, Idaho 83707  
(208) 334-3715  
Fax (208) 334-4128  
[dallas.burkhalter@idfg.idaho.gov](mailto:dallas.burkhalter@idfg.idaho.gov)

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT  
OF DOCKET NO. 13-0109-1501  
(Only Those Sections With Amendments Are Shown.)**

**400. AREAS CLOSED TO HUNTING OF GAME BIRDS.**

**01. General.** Hunting, killing, or molesting of any game bird is prohibited in the following areas: (7-1-93)

**a.** That area of Craters of the Moon National Monument in Blaine and Butte Counties prior to the November 2000 expansion of the Monument by Presidential decree. It is the hunter's responsibility to check with the Park Service to be able to identify the closed area. (4-6-05)

**b.** Hagerman Fossil Beds National Monument in Twin Falls County, EXCEPT that portion within an area fifty (50) feet in elevation above the high water level of the Snake River (the upslope area is marked by yellow fiberglass markers, and hunting is permitted downslope to the river). (3-20-97)

**c.** Harriman State Park Wildlife Refuge in Fremont County. (7-1-93)

**d.** Nez Perce National Historical Park in Clearwater, Idaho, and Nez Perce Counties. (7-1-93)

**e.** That portion of Ada County within Veterans Memorial Park and the area between State Highway 21, Warm Springs Avenue and the Boise City limits. (5-3-03)

**f.** Yellowstone National Park in Fremont County. (7-1-93)

**g.** Fort Boise Wildlife Management Area (WMA) in Canyon County from September 15 through the end of the waterfowl hunting season in the area enclosed by the following boundary: Beginning at the bridge across Sand Hollow Creek on Old Fort Boise Road approximately one hundred (100) yards west of the WMA headquarters, then north along the east bank of Sand Hollow Creek to its confluence with the Snake River, then north and northeast downstream along the east bank of the Snake River to the WMA boundary fence, then south and southeast along the WMA boundary fence to Old Fort Boise Road, then west on Old Fort Boise Road to the point of beginning. (3-20-97)

**h.** Roswell Marsh Wildlife Habitat Area in Canyon County on Sundays, Mondays, Tuesdays and Wednesdays from September 15 through the end of the waterfowl hunting season in the area south of Highway 18

and west of Pebble Lane (Roswell Marsh segment). (5-3-03)

**i.** On any of those portions of federal refuges, State game preserves, State wildlife management areas, bird preserves, bird refuges, and bird sanctuaries for which bird hunting closures have been declared by legislative or Commission action EXCEPT as otherwise expressly stated below in Section 410 under Game Preserves Open to Hunting of Game Birds. (7-1-93)

**j.** Mann's Lake in Nez Perce County and extending three hundred (300) yards beyond the Bureau of Reclamation property that encompasses the lake. (4-6-05)

**02. Migratory Game Birds.** In addition to the areas listed above, hunting, killing, or molesting of any migratory game bird EXCEPT mourning dove is prohibited in the following areas. Areas CLOSED to hunting of migratory game birds: (7-1-93)

**a.** Fort Hall Indian Reservation in Bingham, Bannock, and Power Counties within three hundred (300) yards each way of the Fort Hall Bluffs from Bigbend Boat Launch to the west boundary of the Fort Hall Indian Reservation, and within one hundred (100) yards of any improved roadway or inhabited dwelling any place within the reservation boundary. (7-1-93)

**b.** Hagerman Wildlife Management Area (WMA) in Gooding County in the area enclosed by the following boundary: Beginning at a point two hundred (200) yards west of the point at which U.S. Highway 30 crosses the south bank of Gridley Island, then northwest along a line two hundred (200) yards southwest of and parallel to U.S. Highway 30 to a point two hundred (200) yards west of the junction of U.S. Highway 30 and the WMA entrance, then west and north and east along a line two hundred (200) yards outside of the WMA boundary which is marked by a fence, to the point at which the fence meets U.S. Highway 30, then east and south along a line five hundred (500) yards outside of the WMA boundary to the Snake River, then downstream along the north bank of the Snake River and then along the south bank of Gridley Island to the point where U.S. Highway 30 crosses the south bank of Gridley Island, then two hundred (200) yards west of U.S. Highway 30 to the point of beginning. Exception: Department sponsored waterfowl hunts. (4-4-13)

**c.** Hubbard Reservoir in Ada County including the shoreline area within two hundred (200) yards of the existing water line. (7-1-93)

**d.** Mann's Lake in Nez Perce County and extending three hundred (300) yards beyond the Bureau of Reclamation property line that encompasses the lake. (3-15-02)

**e.** Mormon Reservoir in Camas County including the shoreline area within two hundred (200) yards of the ordinary high water line. (7-1-93)

**f.** Pend Oreille River in Bonner County within two hundred (200) yards each way of the ordinary high water line two thousand sixty-two and one-half (2,062.5) feet above sea level from the U.S. Highway 95 long bridge at Sandpoint downstream to an imaginary line between Springy Point on the south side of the river and Dover Peninsula on the north side of the river. (7-1-93)

**g.** Spokane River in Kootenai County from the Post Falls Dam to Lake Coeur d'Alene at the orange pilings, within two hundred (200) yards of the ordinary high water line two thousand one hundred twenty-eight (2,128) feet above sea level. (7-1-98)

**h.** Thompson Lake in Kootenai County in the area enclosed by the following center-of-roadway boundary and in the additional area within one hundred (100) yards of the exterior side of said boundary: Beginning at the junction of State Highway 97 and Thompson Lake Road 317 north of the town of Harrison, then along Thompson Lake Road 317 to the junction of Blue Lake Road 318 east of Thompson Lake, then along Blue Lake Road 318 to the junction of Anderson Lake Road 319 at Springston, then along Anderson Lake Road 319 to the Union Pacific Railroad tracks, then west along the Union Pacific Railroad tracks to the junction of State Highway 97 west of Harrison, then along State Highway 97 to the point of beginning. (7-1-93)

**03. Geese.** Areas CLOSED to the hunting of geese. In addition to the areas listed in Section 301 and

Subsection 301.01 above, the hunting, killing, or molesting of any species of geese is prohibited in the following areas: (7-1-93)

**a.** Canyon County in the area enclosed by the following roadway boundary and within one hundred fifty (150) feet of the exterior side of said boundary (except that the closure shall extend to one hundred (100) yards from the exterior side of said boundary along that section commencing at the junction of Lake Shore Drive and Rim Road, then south on Rim Road to west Lewis Lane, then east on west Lewis Lane to Lake Shore Drive, then along Lake Shore Drive to Emerald Road): Beginning approximately three fourths (3/4) of a mile south of the City of Nampa at the junction of State Highway 45 (12th Avenue Road) and Greenhurst Road, then west following Greenhurst Road to its junction with Middleton Road, then north following Middleton Road to its junction with Lake Lowell Avenue, then west following Lake Lowell Avenue to its junction with Lake Avenue, then north following Lake Avenue to its junction with West Roosevelt Avenue, then west following West Roosevelt Avenue to its junction with Indiana Avenue, then north following Indiana Avenue to its junction with State Highway 55 (Karcher Road), then west following State Highway 55 to its junction with Riverside Road, then south following Riverside Road to the Deer Flat National Wildlife Refuge boundary, then west along boundary fence below lower embankment as posted to Lake Shore Drive, then in a southeast direction following Lake Shore Drive to its junction with Marsing Road, then east and south on Lake Shore Drive to Rim Drive, then south on Rim Drive to West Lewis Lane, then east on West Lewis Lane to Lake Shore Drive, then southeast on Lake Shore Drive to State Highway 45, then north on State Highway 45 to its junction with Greenhurst Road, the point of beginning. (7-1-93)

**b.** Hagerman Valley in Gooding and Twin Falls Counties in the area enclosed by the following boundary: Beginning at the Gridley Island Bridge on the Snake River, then south and east on U.S. Highway 30 to ~~Miracle Hot Springs, then east on Twin Falls County 4800 North Road (River Road) to Banbury Hot Springs, then upstream approximately three hundred (300) yards to the Banbury Pipeline crossing the Snake River, then east across the Snake River at the Banbury Pipeline, continuing due east to a point two hundred (200) yards east of the east rim of the Snake River Canyon, then north along a line parallel to and two hundred (200) yards east of the Snake River Canyon rim to the Gooding County 3500 South Road (Camp Roach Road), then east on the 3500 South Road to the 1500 East Road, then north on the 1500 East Road to the 3200 South Road, then west on the 3200 South Road to the mile marker 187.5, then on a direct line east to the southern tip of Ritter Island (in the Snake River), then continuing east to the intersection of 3200 South Road and~~ 1300 East Road, then north on the 1300 East Road to the 1200 East Road, then northwest and north on the 1200 East Road to the 3000 South Road, then west on the 3000 South Road to a point (which is five hundred (500) yards east of the intersection of the 3000 South Road and the Hagerman National Fish Hatchery Road) five hundred (500) yards east of the Hagerman Wildlife Management Area (WMA) boundary, then north and west five hundred (500) yards outside the Hagerman WMA boundary to U.S. Highway 30, then west and south two hundred (200) yards outside the Hagerman WMA boundary to the 2900 South Road, then west on the 2900 South Road to the 900 East Road, then due south to a point two hundred (200) yards north of the Snake River, then west and north two hundred (200) yards outside the high water line on the east bank of the Snake River to Lower Salmon Dam, then west across the Snake River, then south, southwest and east two hundred (200) yards outside the high water line on the west bank of the Snake River (including the Idaho Power Upper Salmon Dam diversion canal) to the Gridley Bridge on U.S. Highway 30, the point of beginning. ~~(12-7-94)~~(8-28-15)T

**c.** Minidoka and Cassia Counties in the area enclosed by the following boundary: Within two hundred (200) yards of the high water line of the Snake River from Milner Dam upstream to Meridian Road (north side of the Snake River) and 650 East Road (south side of the Snake River), approximately six and one-half (6 1/2) miles east of the City of Burley. (7-1-93)

## IDAPA 13 - IDAHO DEPARTMENT OF FISH AND GAME

### 13.01.09 - RULES GOVERNING THE TAKING OF GAME BIRDS IN THE STATE OF IDAHO

DOCKET NO. 13-0109-1502

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 36-104(B) and 36-1101(A), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2015.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The purpose of the rule is to allow one new method of take (crossbow) for forest grouse, which is already an approved method of take for certain other big game species in general hunts so the weapon allowance does not represent new weaponry or new technology.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule is simple in nature.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Sharon Kiefer, Deputy Director (208) 334-3771.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 28, 2015.

DATED this 28th Day of September, 2015.

W. Dallas Burkhalter  
Deputy Attorney General  
Idaho Department of Fish and Game  
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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 13-0109-1502**  
**(Only Those Sections With Amendments Are Shown.)**

**300. UPLAND GAME BIRD METHODS OF TAKE.**

- 01. Taking of Upland Game Birds.** No person shall take upland game birds: (7-1-93)
- a.** Except wild turkey, from one-half (1/2) hour after sunset to one-half (1/2) hour before sunrise. Wild turkey shall not be taken between sunset and one-half (1/2) hour before sunrise. The Commission may designate by proclamation the shooting hours on Wildlife Management Areas with Upland Game Bird Permit requirements. (4-11-15)
- b.** With a trap, snare, net, crossbow, or firearms EXCEPT a shotgun using shells not exceeding three and one-half (3-1/2) inches maximum length, slingshot, hand-held or thrown missiles, EXCEPT forest grouse. Forest grouse shall not be taken with a trap, snare, net, or crossbow. Crossbow may be used to take forest grouse by a person who possesses a Disabled Persons Archery Hunting Permit or a Special Weapon Reasonable Modification Hunting Permit authorizing use of a crossbow or by a person hunting in an area where crossbow is a lawful method of take for big game. (~~3-30-01~~)( )
- c.** From any watercraft. (4-7-11)
- d.** By the use or aid of any electronic call. (7-1-93)
- e.** By the aid of baiting. Bait is defined as any substance placed to attract upland game birds. (7-1-93)
- f.** When hunting on Wildlife Management Areas where pheasants are stocked without wearing at least thirty-six (36) square inches of visible hunter orange above the waist. (5-8-09)
- 02. Wild Turkey.** In addition to the methods listed above, wild turkey may not be taken: (7-1-93)
- a.** With lead shot exceeding BB size. (7-1-93)
- b.** With steel shot exceeding T size. (7-1-93)
- c.** By the use of dogs, except during fall hunts. (3-30-01)