

Dear Senators BAIR, Siddoway, Stennett, and  
Representatives GIBBS, Gestrin, Erpelding:

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

IDAPA 13.01.16 - The Trapping of Predatory and Unprotected Wildlife and the Taking of Furbearing  
Animals - Proposed Rule (Docket No. 13-0116-1802);

IDAPA 13.01.17 - Rules Governing the Use of Bait and Trapping for Taking Big Game Animals -  
Proposed Rule (Docket No. 13-0117-1801).

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 10/23/2018. 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 11/21/2018.

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 334-4854, or send a written request to the address on the  
memorandum attached below.



Eric Milstead  
Director

# Legislative Services Office

## Idaho State Legislature

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*Serving Idaho's Citizen Legislature*

### MEMORANDUM

**TO:** Rules Review Subcommittee of the Senate Resources & Environment Committee and the House Resources & Conservation Committee  
**FROM:** Deputy Division Manager - Katharine Gerrity  
**DATE:** October 04, 2018  
**SUBJECT:** Department of Fish and Game

IDAPA 13.01.16 - The Trapping of Predatory and Unprotected Wildlife and the Taking of Furbearing Animals - Proposed Rule (Docket No. 13-0116-1802)

IDAPA 13.01.17 - Rules Governing the Use of Bait and Trapping for Taking Big Game Animals - Proposed Rule (Docket No. 13-0117-1801)

#### **1. IDAPA 13.01.16 - The Trapping of Predatory and Unprotected Wildlife and the Taking of Furbearing Animals**

##### **Summary and Stated Reasons for the Rule**

The Department of Fish and Game submits notice of proposed rule at IDAPA 13.01.16 - The Trapping of Predatory and Unprotected Wildlife and the Taking of Furbearing Animals. According to the department, the rulemaking would revise the distance that ground sets for trapping furbearing animals, or predatory or unprotected wildlife, may be placed from maintained public trails that are paved or unpaved.

##### **Negotiated Rulemaking / Fiscal Impact**

The department states that negotiated rulemaking was initiated, but adds that the polarity of comments within the scope of rulemaking demonstrated that further negotiation would not lead to consensus and the commission declared negotiated rulemaking infeasible. The department indicates that there is no fiscal impact as a result of the rulemaking.

##### **Statutory Authority**

The rulemaking appears to be authorized pursuant to Sections 36-104 and 36-1101, Idaho Code.

Kristin Ford, Manager  
Research & Legislation

Paul Headlee, Manager  
Budget & Policy Analysis

April Renfro, Manager  
Legislative Audits

Glenn Harris, Manager  
Information Technology

## **2. IDAPA 13.01.17 - Rules Governing the Use of Bait and Trapping for Taking Big Game Animals**

### **Summary and Stated Reasons for the Rule**

The Department of Fish and Game submits notice of proposed rule at IDAPA 13.01.17 - Rules Governing the Use of Bait and Trapping for Taking Big Game Animals. According to the department, the rulemaking would revise the distance that ground sets for trapping gray wolves may be placed from maintained public trails that are paved or unpaved.

### **Negotiated Rulemaking / Fiscal Impact**

The department states that negotiated rulemaking was initiated, but adds that the polarity of comments within the scope of rulemaking demonstrated that further negotiation would not lead to consensus and the commission declared negotiated rulemaking infeasible. The department indicates that there is no fiscal impact as a result of the rulemaking.

### **Statutory Authority**

The rulemaking appears to be authorized pursuant to Sections 36-104 and 36-1101, Idaho Code.

cc: Department of Fish and Game  
Sharon Kiefer

#### **\*\*\* PLEASE NOTE \*\*\***

Per the Idaho Constitution, all administrative rules must be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: **1)** Approve the docket in its entirety; **2)** Reject the docket in its entirety; or **3)** Reject the docket in part.

## IDAPA 13 – IDAHO DEPARTMENT OF FISH AND GAME

### 13.01.16 – THE TRAPPING OF PREDATORY AND UNPROTECTED WILDLIFE AND THE TAKING OF FURBEARING ANIMALS

DOCKET NO. 13-0116-1802

#### 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 and 36-1101, 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 17, 2018.

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:

It is being proposed that IDAPA 13.01.16.400 be changed to revise the distance that ground sets for trapping furbearing animals, or predatory or unprotected wildlife, may be placed from maintained public trails that are paved or unpaved.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: This proposed rule change has no associated fee.

**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: There is no effect to the state general fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was initiated. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the June 6, 2018 Idaho Administrative Bulletin, [Vol. 18-6, page 50](#). However, the polarity of comments within the scope of rulemaking demonstrated that further negotiation would not lead to consensus and the Fish and Game Commission declared negotiated rulemaking infeasible.

**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: This proposed rule does not include an incorporation by reference.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cory Mosby, (208) 334-2920.

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 24, 2018.

Dated this 27th day of August, 2018.

Cory Mosby  
Furbearer Staff Biologist  
Idaho Department of Fish and Game  
600 S. Walnut Street  
P.O. Box 25  
Boise, ID 83707  
Phone: (208) 334-2920  
Fax: (208) 334-2114

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 13-0116-1802**  
**(Only Those Sections With Amendments Are Shown.)**

**400. METHODS OF TAKE.**

**01. Furbearing Animals.** No person shall take beaver, muskrat, mink, marten, or otter by any method other than trapping. In Valley County and portions of Adams County in the Little Salmon River drainage, red fox may be taken only by trapping. (5-3-03)

**02. Hunting.** No person hunting permissible furbearing animals or predatory or unprotected wildlife shall: (7-1-93)

**a.** Hunt with any weapon the possession of which is prohibited by state or federal law. (7-1-93)

**b.** Hunt with dogs unless they comply with IDAPA 13.01.15, "Rules Governing the Use of Dogs." (7-1-93)

**c.** Hunt any furbearing animal with or by the aid of artificial light. (4-7-11)

**d.** Persons may hunt raccoon with the aid of an artificial light without a permit from the Director but no person hunting raccoon at night shall: (4-7-11)

**i.** Hunt from a motorized vehicle. (7-1-93)

**ii.** Use any light attached to any motor vehicle. (7-1-93)

**iii.** Hunt on private land without obtaining written permission from the landowner or lessee. (7-1-93)

**03. Trapping.** No person trapping furbearing animals or predatory or unprotected wildlife shall: (7-1-93)

**a.** Use for bait or scent, any part of a domestic or wild origin game bird, big game animal, upland game animal, game fish, or protected nongame wildlife. (4-7-11)

**b.** Use any set within thirty (30) feet of any visible bait. (4-6-05)

**c.** Use a dirt hole ground set with bait unless the person ensures that the bait remains covered at all times to protect raptors and other meat-eating birds from being caught accidentally. (4-7-11)

**d.** Use live animals as a bait or attractant. (4-6-05)

**e.** Place any ground ~~water, or other~~ sets on, across, or within ~~five (5)~~ ten (10) feet of ~~center line the~~ edge of any maintained unpaved public trail. (4-7-11)(    )

**f.** Place any ground set on, across, or within any public highway as defined in Section 36-202, Idaho Code; except ground sets may be placed underneath bridges and within and at culverts that are part of a public highway right-of-way. (4-7-11)

**g.** Place any ground set incorporating snare, trap, or attached materials within three hundred (300) feet of any designated public campground, trailhead, paved trail, or picnic area. Cage or box live traps are permitted within three hundred (300) feet of designated public campgrounds, trailheads, paved trails, or picnic areas as allowed by city, county, state, and federal law. (3-29-12)(    )

- h.** Place or set any ground set snare without a break-away device or cable stop incorporated within the loop of the snare. (3-29-12)
- i.** Place any ground set incorporating a foothold trap with an inside jaw spread greater than nine (9) inches. (3-29-12)

## IDAPA 13 – IDAHO DEPARTMENT OF FISH AND GAME

### 13.01.17 – RULES GOVERNING THE USE OF BAIT AND TRAPPING FOR TAKING BIG GAME ANIMALS

DOCKET NO. 13-0117-1801

#### 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 and 36-1101, 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 17, 2018.

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:

It is being proposed that IDAPA 13.01.17.400 be changed to revise the distance that ground sets for trapping gray wolves may be placed from maintained public trails that are paved or unpaved.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: This proposed rule change has no associated fee.

**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: There is no effect to the state general fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was initiated. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the June 6, 2018 Idaho Administrative Bulletin, [Vol 18-6, page 51](#). However, the polarity of comments within the scope of rulemaking demonstrated that further negotiation would not lead to consensus and the Fish and Game Commission declared negotiated rulemaking infeasible.

**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: This proposed rule does not include an incorporation by reference.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cory Mosby, (208) 334-2920.

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 24, 2018.

Dated this 27th day of August, 2018.

Cory Mosby  
Furbearer Staff Biologist  
Idaho Department of Fish and Game  
600 S. Walnut Street  
P.O. Box 25  
Boise, ID 83707  
Phone: (208) 334-2920  
Fax: (208) 334-2114

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 13-0117-1801**  
**(Only Those Sections With Amendments Are Shown.)**

**400. TRAPPING BIG GAME ANIMALS.**

Trapping may be used to take ONLY gray wolf and ONLY under the following conditions. (4-4-13)

**01. Defined Terms.** (4-4-13)

**a.** ‘Bait’ for trapping purposes is defined as any animal parts; except bleached bones or liquid scent. (4-4-13)

**b.** ‘Ground set’ is defined as any foothold trap, body-gripping trap, or snare originally set in or on the land (soil, rock, etc.). This includes any traps elevated up to a maximum of thirty-six (36) inches above the natural ground level. (4-4-13)

**c.** For trapping purposes, a ‘public trail’ is defined as any trail designated by any city, county, state, or federal transportation or land management agency on the most current official map of the agency. (4-4-13)

**02. Methods of Take When Trapping.** No person trapping gray wolf shall: (4-4-13)

**a.** Use any set, EXCEPT a ground set. (4-4-13)

**b.** Use for bait or scent, any part of a domestic or wild origin game bird, big game animal, upland game animal, game fish, or protected nongame wildlife; EXCEPT: (4-4-13)

**i.** Gray wolves may be trapped near a big game animal that has died naturally and the carcass has not been repositioned for trapping purposes. Natural causes shall not include any man-caused mortality. (4-4-13)

**ii.** Gray wolves may be trapped using a carcass of a legally taken gray wolf with the hide removed. (4-4-13)

**iii.** Gray wolves may be trapped using the parts of accidentally killed wildlife salvaged in accordance with IDAPA 13.01.10, “Rules Governing the Importation, Possession, Release, Sale or Salvage of Wildlife,” Subsections 300.02.c. and 300.02.d. in Game Management Units as identified by the Commission’s Big Game Season Proclamation. The Proclamation is published in a brochure available at department offices and license vendors. (4-4-13)

**c.** Use any set within thirty (30) feet of any visible bait; including bait allowed in Subsection 400.02.b.i., 400.02.b.ii., and 400.02.b.iii. (4-4-13)

**d.** Use a dirt hole ground set with bait unless the person ensures that the bait remains covered at all times to protect raptors and other meat-eating birds from being caught accidentally. (4-4-13)

**e.** Use live animals as a bait or attractant. (4-4-13)

**f.** Place any ground set on, across, or within ~~five (5)~~ ten (10) feet of ~~center line~~ the edge of any maintained unpaved public trail. (4-4-13)(    )

**g.** Place any ground set on, across, or within any public highway as defined in Section 36-202, Idaho Code; EXCEPT ground sets may be placed underneath bridges and within and at culverts that are part of a public highway right-of-way. (4-4-13)

**h.** Place any ground set incorporating snare, trap, or attached materials within three hundred (300) feet



of any designated public campground, trailhead, paved trail, or picnic area. Cage or box live traps are permitted within three hundred (300) feet of designated public campgrounds, trailheads, paved trails, or picnic areas as allowed by city, county, state, and federal law. ~~(4-4-13)~~( )

**i.** Place or set any ground set snare without a diverter; or without a break-away device or cable stop incorporated within the loop of the snare. (4-4-13)

**j.** Place any ground set incorporating a foothold trap with an inside jaw spread greater than nine (9) inches. (4-4-13)

**k.** Trap any gray wolf within one-half (1/2) mile of any active Department of Fish and Game big game feeding site. (4-4-13)

**l.** Trap gray wolf within two hundred (200) yards of the perimeter of any designated dump ground or sanitary landfill. (4-4-13)

**03. Trapping Hours.** Trapped gray wolves may be dispatched any time of day or night. (4-4-13)

**04. Wounding and Retrieving.** No person shall wound or kill any big game animal without making a reasonable effort to retrieve it and reduce it to possession. (4-4-13)

**05. Unlawful Methods of Take.** No person shall take big game animals as outlined in IDAPA 13.01.08, "Rules Governing the Taking of Big Game Animals in the State of Idaho" Section 410; EXCEPT trapped gray wolves may be dispatched with any rimfire rifle, rimfire handgun or any muzzleloading handgun. (4-4-13)