

Dear Senators BURTENSHAW, Adams, Semmelroth, and
Representatives MENDIVE, Shepherd, Burns:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the Department of Fish and Game:
IDAPA 13.01.07 - Rules Governing Taking of Wildlife - Proposed Rule (Docket No. 13-0107-2401).

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 11/08/2024. 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 12/06/2024.

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.



Terri Kondeff
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: Legislative Drafter - Alli Olson

DATE: October 22, 2024

SUBJECT: Department of Fish and Game

IDAPA 13.01.07 - Rules Governing Taking of Wildlife - Proposed Rule (Docket No. 13-0107-2401)

Summary and Stated Reasons for the Rule

The Department of Fish and Game submits notice of proposed rulemaking related to the Rules Governing Taking of Wildlife, IDAPA 13.01.07. The Department states the proposed rule addresses two things. First, the rulemaking modifies four game management zones to align with changes in elk zones presented in the Department's Idaho Elk Management Plan 2024-2030, adopted in July 2024. Second, the proposed rule adds language to clarify that Department and Commission authorization of an activity does not authorize any person to violate federal laws relating to federally protected wildlife when there is not a valid federal take authorization in place.

Negotiated Rulemaking / Fiscal Impact

The Department states that negotiated rulemaking was not conducted for IDAPA 13.01.07.250 since the proposed rule is consistent with the 2024-2030 Idaho Elk Management Plan, which the Commission adopted after holding open houses in the seven Fish and Game Regions, public meetings of the Commission, draft issuance, and public comment opportunities. Nor was negotiated rulemaking conducted for IDAPA 13.01.07.900 due to the simple nature of the rulemaking. The Department also states that there are no new fees associated with this rulemaking and that there is no fiscal impact to the General Fund.

Statutory Authority

The Department of Fish and Game appears to have the authority to promulgate this proposed rule pursuant to Sections 36-103, 36-104, 36-504, and 36-1101 Idaho Code.

cc: Department of Fish and Game
Amber Worthington

*** PLEASE NOTE ***

Paul Headlee, Deputy Director Matt Drake, Manager Keith Bybee, Manager April Renfro, Manager Norma Clark, Manager
Legislative Services Office Research & Legislation Budget & Policy Analysis Legislative Audits Information Technology

Statehouse, P.O. Box 83720
Boise, Idaho 83720-0054

Tel: 208-334-2475
legislature.idaho.gov

Per the Idaho Constitution, all administrative rules may 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

13.01.07 – RULES GOVERNING TAKING OF WILDLIFE

DOCKET NO. 13-0107-2401

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 36-103, 36-104, 36-504, 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 16, 2024.

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:

This rulemaking addresses two items. First, this rulemaking modifies four game management zones to align with changes in elk zones presented in the Department's Idaho Elk Management Plan 2024-2030. Zone changes comprise the following: Owyhee (remove GMU 38), Boise River (add GMU 38), Big Desert (add GMUs 53 and 68A), and Snake River (remove GMUs 53 and 68A).

Second, this rulemaking adds language to clarify that Department and Commission regulatory actions do not authorize any person to violate federal laws relative to federally protected wildlife when there is not a valid federal take authorization under federal law, regulation, or permit.

FEE SUMMARY: There is no fee associated with this rule.

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 fiscal impact associated with this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted for proposed rule IDAPA 13.01.07.250. This proposed rule is consistent with the 2024-2030 Idaho Elk Management Plan, which the Commission adopted in July 2024 after holding open houses in the seven Fish and Game Regions, public meetings of the Commission, draft plan issuance, and public comment opportunities.

Pursuant to Section 67-5220(2), negotiated rulemaking was not conducted for proposed Rule IDAPA 13.01.07.900 due to the simple nature of the rulemaking. The rulemaking clarifies that Department or Commission authorization of an activity does not authorize any person to violate federal law when there is not valid federal take authorization in place.

INCORPORATION BY REFERENCE: This rulemaking contains no incorporation by reference.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Amber Worthington, 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 23, 2024.

DATED this 21st day of August, 2024.

Amber Worthington
Deputy Director
Idaho Department of Fish and Game
600 S. Walnut Street
P.O. Box 25
Boise, ID 83707
(208) 334-3771

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 13-0107-2401
(Only Those Sections With Amendments Are Shown.)

13.01.07 – RULES GOVERNING TAKING OF WILDLIFE

250. GAME MANAGEMENT ZONE DESCRIPTIONS.

- | | | |
|------------|---|--------------------------|
| 01. | Panhandle Zone. All of Units 1, 2, 3, 4, 4A, 5, 6, 7, and 9. | (3-31-22) |
| 02. | Palouse Zone. All of Units 8, 8A, and 11A. | (3-31-22) |
| 03. | Dworshak Zone. All of Unit 10A. | (3-31-22) |
| 04. | Hells Canyon Zone. All of Units 11, 13, and 18. | (3-31-22) |
| 05. | Lolo Zone. All of Units 10 and 12. | (3-31-22) |
| 06. | Elk City Zone. All of Units 14, 15, and 16. | (3-31-22) |
| 07. | Selway Zone. All of Units 16A, 17, 19, and 20. | (3-31-22) |
| 08. | Middle Fork Zone. All of Units 20A, 26, and 27. | (3-31-22) |
| 09. | Salmon Zone. All of Units 21, 21A, 28, and 36B. | (3-31-22) |
| 10. | Weiser River Zone. All of Units 22, 32, and 32A. | (3-31-22) |
| 11. | McCall Zone. All of Units 19A, 23, 24, and 25. | (3-31-22) |
| 12. | Lemhi Zone. All of Units 29, 37, 37A, and 51. | (3-31-22) |
| 13. | Beaverhead Zone. All of Units 30, 30A, 58, 59, and 59A. | (3-31-22) |
| 14. | Brownlee Zone. All of Unit 31. | (3-31-22) |
| 15. | Sawtooth Zone. All of Units 33, 34, 35, and 36. | (3-31-22) |
| 16. | Pioneer Zone. All of Units 36A, 49, and 50. | (3-31-22) |
| 17. | Owyhee Zone. All of Units 38 , 40, 41, and 42. | (3-31-22) () |

- 18. **South Hills Zone.** All of Units 46, 47, 54, 55, 56, and 57. (3-31-22)
- 19. **Boise River Zone.** All of Units 38 and 39. (~~3-31-22~~)()
- 20. **Smoky - Bennett Zone.** All of Units 43, 44, 45, 48, and 52. (3-31-22)
- 21. **Big Desert Zone.** All of Units 52A, 53, 68, and 68A. (~~3-31-22~~)()
- 22. **Island Park Zone.** All of Units 60, 60A, 61, 62, and 62A. (3-31-22)
- 23. **Palisades Zone.** All of Units 64, 65, and 67. (3-31-22)
- 24. **Tex Creek Zone.** All of Units 66 and 69. (3-31-22)
- 25. **Bannock Zone.** All of Units 70, 71, 72, 73, 73A, and 74. (3-31-22)
- 26. **Bear River Zone.** All of Units 75, 77, and 78. (3-31-22)
- 27. **Diamond Creek Zone.** All of Units 66A and 76. (3-31-22)
- 28. **Snake River Zone.** All of Units ~~53,~~ 63, and 63A, ~~and 68A.~~ (~~3-31-22~~)()

(BREAK IN CONTINUITY OF SECTIONS)

501. – ~~98~~99. (RESERVED)

900. FEDERALLY PROTECTED WILDLIFE.

No authorization of an activity by the Commission or Department should be interpreted as state authorization to take federally protected wildlife in the absence of a federal take authorization, or as an exemption from prosecution for unauthorized take under federal or state law. In any instance where federal law prohibits taking of wildlife without federal authorization, authorization by the Commission or Department of an activity taking such federally protected wildlife is contingent upon that person also having valid federal take authorization. “Federal take authorization” includes authorization under federal law, regulation, permit, incidental take statement, or other valid federal authorization. “Authorization by the Commission or Department” includes authorization under Idaho law, administrative rule, proclamation, order, issuance of any license, or other state authorization. ()

901. – 999. (RESERVED)