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ARCHIVES DIVISION
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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 635
DEPARTMENT OF FISH AND WILDLIFE

FILED
10/18/2018 11:47 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Adopt Urban Deer Population Control Rules

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 12/07/2018 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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Salem, OR 97303

Filed By:
Roxann Borisch
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 12/07/2018

TIME: 8:00 AM - 5:00 PM

OFFICER: ODFW Commission

ADDRESS: Oregon Department of Fish
and Wildlife

4034 Fairview Industrial Drive SE
Salem, OR 97303

NEED FOR THE RULE(S):

Senate Bill 373 directs the Department of Fish and Wildlife to develop and adopt by rule a pilot program for urban deer population control. The rules will implement a program under which cities with deer populations at public nuisance levels can reduce the number of deer and distribute the edible portions of deer.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

A copy of the rules and the other documents relied upon for this rulemaking are available from the Oregon Department of Fish and Wildlife, Fish Division, Second Floor, 4034 Fairview Industrial Drive SE, Salem, Oregon 97302-1142, between the hours of 8:00 a.m. and 4:00 p.m., on normal working days, Monday through Friday.

FISCAL AND ECONOMIC IMPACT:

ODFW does not anticipate major fiscal or economic impacts.

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ODFW does not anticipate major fiscal or economic impacts.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

The proposed rules will affect state agencies, units of local government, and the public, respectively, as discussed below:

a. There are no projected state fiscal impacts to state government agencies, including the Oregon Department of Fish and Wildlife (ODFW) and the Oregon State Police (OSP). The number of tags given by ODFW will not change substantially, and will not generate any losses in revenue. OSP enforcement of wildlife laws will also not change substantially.

b. There is a projected increase in projected state fiscal impacts to local government agencies with high deer populations. The cities are responsible for appointing an agent and all costs associated with processing and distributing any deer taken. The sale of antlers and hides may be used to offset any of these costs. We cannot directly estimate these impacts since they will vary greatly based on locality.

c. The expected impacts to the public will be seen in reduced damage to public and property within city limits. The number of tags released to the general public will remain unchanged based on the passage of this rule.

No compliance effects are expected for small business.

Small businesses may see small increase to sales based on the additional deer taken. These impacts are varying, and would depend heavily on location of cities with deer population issues. In general, we project little to no impacts to small businesses.

Any agent who takes deer under this program must immediately report the taking to the Department or a person authorized to enforce the wildlife laws.

At a minimum, the reported information must include:

- (a) Name and phone number of the person reporting the take;
- (b) The permit number;
- (c) Number and sex of animals taken (including antler points if bucks are taken);
- (d) Location/address where take occurred;

- (e) Time of take;
- (f) Destination of carcasses.
- (g) Status of biological samples (if requested to take samples).

The city is responsible for all processing and distribution fees for any deer taken.

Cities are responsible to appoint an agent to take deer and are responsible for all fees associated with processing and distribution of any deer taken.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Small businesses were not involved in the development of this rule.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

A small committee was convened by which ODFW state wildlife biologists and staff consulted with Oregon League of Cities. Staff also communicated with Oregon food banks. There were no issues brought forward by the League or food bank organizations

RULES PROPOSED:

635-043-0250, 635-043-0260, 635-043-0270, 635-043-0280, 635-043-0290

ADOPT: 635-043-0250

RULE SUMMARY: Senate Bill 373 directs the Department of Fish and Wildlife to develop and adopt by rule a pilot program for urban deer population control.

CHANGES TO RULE:

635-043-0250

Purpose of the Urban Deer Population Control Pilot Program

The purpose of these rules is to describe the procedures and requirements for issuing kill permits to take deer within urban boundaries thereby allowing local governments the ability to reduce deer populations in response to public nuisance as defined in OAR 498.012, safety concerns, and/or property damage. The Department acts as a

contact and issues kill permits necessary to take wildlife including game mammals.

Statutory/Other Authority: ORS 496.012, 496.162, 498.002, 498.006, 498.012, Senate Bill 373 (2017)

Statutes/Other Implemented: ORS 496.012, 496.162, 498.002, 498.006, 498.012

ADOPT: 635-043-0260

RULE SUMMARY: Senate Bill 373 directs the Department of Fish and Wildlife to develop and adopt by rule a pilot program for urban deer population control.

CHANGES TO RULE:

635-043-0260

Permit to Control Urban Deer Application Requirements

Before requesting a kill permit to conduct urban deer population control the city must:

(1) Adopt and enforce an ordinance restricting placing, depositing, distributing, storing or scattering food, garbage or any other attractant so as to knowingly constitute a lure, attractant or enticement for deer.

(2) Adopt an ordinance, resolution or order declaring that deer populations have risen to levels that constitute a public nuisance.

(3) Following the passage by a city of subsections (1) and (2) of this section, the city can petition the Department for kill permits necessary to reduce deer population levels within city limits.

Statutory/Other Authority: ORS 496.012, 496.162, 498.002, 498.006, 498.012, Senate Bill 373 (2017)

Statutes/Other Implemented: ORS 496.012, 496.162, 498.002, 498.006, 498.012

ADOPT: 635-043-0270

RULE SUMMARY: Senate Bill 373 directs the Department of Fish and Wildlife to develop and adopt by rule a pilot program for urban deer population control.

CHANGES TO RULE:

635-043-0270

Department and City Responsibilities

(1) In cities where the Department determines the deer population does constitute a public nuisance, the Commission authorizes the Department's local wildlife biologists to issue kill permits to the city to take deer for purposes of population control. The Department will: ¶

(a) Designate dates when take is allowed. ¶

(b) Determine the number and sex of deer to be taken. The number of deer taken should not exceed the number necessary to reduce the deer population to a level that no longer constitutes a public nuisance. ¶

(c) Issue the appropriate kill permit(s) to the city. ¶

(2) The city is responsible to: ¶

(a) Designate areas within city limits where deer are to be taken. ¶

(b) Designate the manner of taking deer: ¶

(A) It is unlawful to use any poisoning, immobilizing, or tranquilizing drug or chemical to take or euthanize deer for purposes of population control. ¶

(B) If live capture methods are used traps must be checked at least once per day, animals must be immediately euthanized and not relocated. ¶

(C) Cities and agents must follow Department approved capture methodology, and handling requirements. ¶

(D) Methods for humane euthanasia must comply with most recent version of American Veterinary Medical Association standards; ¶

(E) Non-toxic bullets must be used if animals are euthanized with a firearm. ¶

(c) Designate an agent(s) with appropriate authorities to take deer.

Statutory/Other Authority: ORS 496.012, 496.012, 498.002, 498.006, 498.012, Senate Bill 373 (2017)

Statutes/Other Implemented: ORS 496.012, 496.012, 498.002, 498.006, 498.012

ADOPT: 635-043-0280

RULE SUMMARY: Senate Bill 373 directs the Department of Fish and Wildlife to develop and adopt by rule a pilot program for urban deer population control.

CHANGES TO RULE:

635-043-0280

Agent Authorization to Take Deer on Other than City Owned Property

Any agent who takes a deer on property other than city owned property must have in possession written authority from the landowner or lawful occupant of the land which includes:

(1) The date of issuance of the authorization;

(2) The name, address, telephone number and signature of the person granting the authorization;

(3) The name, address and telephone number of the person to whom the authorization is granted;

(4) The expiration date of the authorization, which shall be no later than one year from the date of issuance of the authorization.

Statutory/Other Authority: ORS 496.012, 496.162, 498.002, 498.006, 498.012, Senate Bill 373 (2017)

Statutes/Other Implemented: ORS 496.012, 496.162, 498.002, 498.006, 498.012

ADOPT: 635-043-0290

RULE SUMMARY: Senate Bill 373 directs the Department of Fish and Wildlife to develop and adopt by rule a pilot program for urban deer population control.

CHANGES TO RULE:

635-043-0290

Salvage of Deer

As defined in ORS 315.154, and used in this section "food bank or other charitable organization" means any organization located in the state, including but not limited to a gleaning cooperative, that is exempt from federal income taxes under section 501(c)(3) of the Internal Revenue Code, and has as a principal or ongoing purpose the distribution of food to children or homeless, unemployed, elderly or low-income individuals. ¶

(1) Any deer taken, to the extent feasible, shall be salvaged and delivered to a "food bank or other charitable organization" as defined in ORS 315.154 for distribution. Any processing and distribution fees shall be at the expense of the city. ¶

(2) The Department and the Commission are not liable for any loss or damages arising out of the recovery, possession, transportation or consumption of deer pursuant to a kill permit. ¶

(3) The city may sell hides and antlers from deer taken under this program within thirty days of take to persons licensed under ORS 498.019 to offset the cost of the program. Antlers not sold must be surrendered to the Department within forty-five days of take. Antler sales must comply with 635-00-0050(4). ¶

(4) Any agent who takes deer under this program must immediately report the taking to the Department or a person authorized to enforce the wildlife laws. At a minimum, the reported information must include: ¶

(a) Name and phone number of the person reporting the take: ¶

(b) The kill permit number(s): ¶

(c) Number and sex of animals taken (including antler points if bucks are taken): ¶

(d) Location/address where take occurred: ¶

(e) Time of take: ¶

(f) Destination of carcasses. ¶

(g) Status of biological samples (if requested to take samples).

Statutory/Other Authority: ORS 496.012, 496.162, 498.002, 498.006, 498.012, Senate Bill 373 (2017)

Statutes/Other Implemented: ORS 496.012, 496.162, 498.002, 498.006, 498.012