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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 8:51 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Ceremonial Harvest of Deer, Elk and Pronghorn by the Burns Paiute Tribe of Oregon

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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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 97302

NEED FOR THE RULE(S):

Rules are being proposed to allow an annual limited take of game animals for the Burns Paiute Tribe of the Burns Paiute Indian colony of Oregon. Under the proposed change, a new type of permit would be created to be issued to tribal program staff and would allow for hunting of deer elk and pronghorn for ceremonial purposes by enrolled tribal members. Methods of take would be the same as those authorized under normal hunting seasons. Commission approval is required for issuance of big game tags along with public testimony.

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:

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

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).

A. The only state agencies that might be affected by adoption of these rules are the Oregon Department of Fish and Wildlife (ODFW) and the Oregon State Police (OSP). Small administrative costs would apply for the process of granting these permits, but they are likely to be absorbed within existing resources. No significant changes from the current levels of ODFW or OSP's operations or expenditures are expected as a result of the adoption of these rules.

B. No units of local government are expected to be affected by these rules. No significant changes from the current levels of any local agencies' operations or expenditures are expected as a result of the adoption of these rules.

C. The public could be affected by the adoption of these rules: The Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon have requested 8 deer permits, 6 elk permits and 4 pronghorn permits. Harvest would occur during periods when no hunting seasons are currently authorized. The harvest of these additional animals is not likely to have a discernable effect on big game populations in the region. For this reason, there would be little risk to the populations valued by hunters and wildlife viewers. Therefore, there is not likely to be a loss of revenues to businesses

There is no additional cost of compliance for small businesses due to the adoption of this rule.

Small businesses that provide services to hunters or wildlife viewers who are active in the state of Oregon could be impacted by this rule. The types of small businesses could include guides/outfitters, food and beverage stores, gasoline stations, sporting goods stores, general merchandise stores, accommodation businesses, food services and drinking places. The proposed ceremonial permits do not overlap with the standard public big game hunting seasons. Given most hunters or wildlife viewers would be patronizing businesses in a myriad of locations, the number of small businesses subject to the rule cannot be estimated. However, since the impact to the public is expected to be insignificant, it would also be unlikely that any impacts to the number of small business catering to those sportspeople would experience any significant revenue losses.

There are no additional costs from administrative activities required for small businesses due to the changes to this rule.

There are no additional costs for equipment or services required for small businesses due to the changes to this rule.

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

Not applicable

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

Department staff met with interested stakeholders. Correspondence from and testimony by interested persons is accepted into record and is part of the rulemaking process.

ADOPT: 635-043-0150

RULE SUMMARY: Adoption of rules to allow an annual limited take of game animals for the Burns Paiute Tribe of the Burns Paiute Indian colony of Oregon.

CHANGES TO RULE:

635-043-0150

Burns Paiute Ceremonial Harvest Permits

Ceremonial harvest permits for use by the Burns Paiute Tribe (for the purpose of this rule here in referred to as the Tribe). ¶

(1) The Commission authorizes the harvest of deer, elk and pronghorn antelope by members of the Burns Paiute Tribe for ceremonial purposes in accordance with these rules. ¶

(2) Authorization for ceremonial harvest permits will be considered only upon written request from the Tribe. ¶

(3) Authorization for harvest shall specify the season dates, times, locations, and numbers of permits authorized for each species. ¶

(a) Permits authorized shall be provided to the Tribe and may be used only by enrolled members of the Tribe. Each permit shall specify the season dates, times, and location where the permit is valid. ¶

(b) Enrolled Burns Paiute Tribal hunters using authorized ceremonial harvest permits must carry on their person a valid ceremonial harvest permit, and shall present this document, as well as documents identifying said hunter as a member of the Burns Paiute Tribe, to Department employees or law enforcement personnel upon request. ¶

(c) Enrolled Burns Paiute Tribal members designated to harvest animals using ceremonial harvest permits shall not be required to possess a state hunting license or big game tags in addition to the ceremonial harvest permits authorizing harvest. ¶

(d) In recognition of accepted Tribal custom, the Commission acknowledges that Tribal authorities may designate individuals to harvest animals using these ceremonial harvest permits. The Tribe may designate the number of permits used by enrolled Burns Paiute Tribal members, so long as the total harvest does not exceed the number of ceremonial tags authorized under subsection (e) of these rules. ¶

(e) Pursuant to a request received under subsection (2), the Department shall issue up to eight (8) deer permits with a bag limit of "one deer", up to six (6) elk permits with a bag limit of "one elk", and up to four (4) pronghorn antelope permits with a bag limit of "one pronghorn", for ceremonial purposes annually. Season dates are: January 1 through three days before the first day of general archery deer and elk season (inclusive) for deer and elk permits, and August 1 through three days before the first day of the Department pronghorn antelope season in the Silvies and Malheur River WMUs for pronghorn antelope. ¶

(f) Each permit shall be validated immediately upon successful harvest of a designated animal by blacking out in ink, or remove in its entirety, only the month and day of the kill. The permit shall be attached securely to the game mammal in plain sight. The permit shall be kept attached to the carcass or remain with any parts thereof so long as the same are preserved. ¶

(g) Ceremonial harvest permits are valid only on federal lands and Burns Paiute Tribal lands (Tribal trust and fee title) in the Silvies Wildlife Management Unit, that portion of the Malheur River Wildlife Management Unit (WMU) that is north of U.S. Highway 20, and the Burns Paiute Tribal property known as the Jonesboro property south of U.S. Highway 20 in the Malheur River WMU. Ceremonial harvest permits cannot be used on private lands and do not authorize trespass upon private lands to access federal or tribal lands where landowner permission has not been obtained. Ceremonial harvest permits do not authorize entry or use on public lands where hunting, access, or discharge of firearms is precluded by any other statute, rule or law. ¶

(h) Methods of take, shooting hours, and other restrictions or limits on hunting methods, weapons and techniques all remain the same as those pertaining to sport harvest during other Commission authorized big game seasons. ¶

(4) The Tribe shall report all harvest of deer, elk or pronghorn antelope conducted under ceremonial harvest

permit to the Department on an annual basis. ¶

(5) Animals harvested under an authorized ceremonial harvest permit may only be used by Tribal members for ceremonial and cultural purposes. Animals and parts thereof may not be bartered or sold. ¶

(6) Authorization of these ceremonial-hunting permits does not create, convey, modify, limit, impede or imply any tribal legal or treaty entitlement.

Statutory/Other Authority: ORS 496

Statutes/Other Implemented: ORS 496