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**NOTICE OF PROPOSED RULEMAKING**  
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 635  
DEPARTMENT OF FISH AND WILDLIFE

**FILED**  
10/12/2020 10:32 AM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Amend Rules for Ceremonial Hunting and Fishing by the Burns Paiute Tribe of Oregon.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 12/11/2020 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 97302

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: 12/11/2020

TIME: 8:00 AM - 5:00 PM

OFFICER: ODFW Commission

ADDRESS: Oregon Dept of Fish and  
Wildlife

4034 Fairview Industrial Dr SE  
Salem, OR 97302

**SPECIAL INSTRUCTIONS:**

Because of the rapidly changing  
situation with COVID-19, all or  
portions of this hearing may be  
conducted electronically. Information  
will be posted on our website at  
[https://www.dfw.state.or.us/agency/c  
ommission/minutes/](https://www.dfw.state.or.us/agency/commission/minutes/)

**NEED FOR THE RULE(S):**

These rules are needed to amend the ceremonial harvest permits for Burns Paiute Tribe to include additional elk tags and extend season dates for all species, and to allow recreational harvest of spring Chinook salmon in a specific section of the Malheur River from June 1 through August 31.

**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 & Wildlife Divisions, 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.

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#### FISCAL AND ECONOMIC IMPACT:

The fiscal and economic impact of amending rules on ceremonial harvest permits and extending season dates for the Burns Paiute Tribe is expected to be positive in nature for Tribal members, while adhering to the State of Oregon's Wildlife policy ORS 496.012.

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#### 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).*

Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

The state agencies that would be affected are the Oregon Department of Fish and Wildlife (Department) and the Oregon State Police (OSP). The Department's and OSP's enforcement efforts and other associated costs are not expected to be directly impacted in a significant manner.

There are no major expected fiscal or economic impacts to local governments. No significant changes from current levels of local agencies operations or expenditures are expected as a result of the adoption of these rules.

The Department is not able to provide a monetary estimate of the economic impact of these rule amendments, the economic effect is expected to be positive. The amendments provide clarification on the allocation of ceremonial harvest permits for the Burns Paiute Tribe to include additional elk tags and extended seasons for all species, as well as allowing recreational harvest of spring Chinook salmon in a section of the Malheur River from June 1 through August 31. These resources are of great economic, cultural, and ceremonial significance to the Burns Paiute Tribe. The harvest of additional animals is not likely to have a discernable effect on big game populations in the region or impact tag opportunities for non-tribal hunters. Meaning that these amendments are unlikely to affect businesses that serve hunters and wildlife viewers in general.

Cost of compliance effect on small business (ORS 183.336): Additional compliance costs to small businesses are not expected.

Estimate the number of small businesses and types of business and industries with small business subject to the rule: The impact to the small businesses is expected to be insignificant, it is unlikely that businesses catering to sportspeople would experience any significant revenue losses resulting from these amendments.

Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

No additional costs anticipated.

Equipment, supplies, labor and increased administration required for compliance: No additional costs anticipated.

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

Does not apply to this rule.

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

A Rules Advisory Committee was not consulted. The rules are believed to be fully compatible with legislative direction on the goals of wildlife management in Oregon.

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RULES PROPOSED:

635-021-0090, 635-043-0150

AMEND: 635-021-0090

RULE SUMMARY: 635-021-0090 (2) allows Burns Paiute Tribal members to angle for hatchery Chinook salmon released in the Malheur River using traditional methods as regulated by adopted tribal regulations.

CHANGES TO RULE:

635-021-0090

Inclusions and Modifications

(1) The 2020~~1~~ Oregon Sport Fishing Regulations provide requirements for the Southeast Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the 2020~~1~~ Oregon Sport Fishing Regulations.

(2) The Malheur River is open to angling for spring Chinook salmon on the mainstem river from the Bluebucket Creek confluence upstream to the headwaters of McCoy Creek, Lake Creek, Big Creek and tributaries, and Bosonberg Creek from June 1 through August 31.

(a) The daily bag limit is two (2) hatchery spring Chinook salmon; two daily limits in possession.

(b) All other General, Statewide and Southeast Zone regulations, as provided in the Oregon Sport Fishing Regulations, remain in effect.

(3) Burns Paiute Tribal Members participating in this experimental spring Chinook fishery are governed by the conditions and limitations established in the Burns Paiute Tribal Fishing Code.

(a) Burns Paiute Tribal members are not required to have an ODFW angling license or report catch on an ODFW combined angling tag when fishing for spring Chinook in the area described above in section (2).

(b) Burns Paiute Tribal members must have a valid tribal identification card in their possession.

(c) When fishing for any species other than spring Chinook, an ODFW angling license is required and General, Statewide and Southeast Zone regulations, as provided in the Oregon Sport Fishing Regulations, remain in effect.

Statutory/Other Authority: ORS 183.325, ORS 496.138, ORS 496.146

Statutes/Other Implemented: ORS 496.162

AMEND: 635-043-0150

RULE SUMMARY: OAR 635-043-0150 (3) establishes permits for the take of deer, elk, and pronghorn along with season dates and hunt area for ceremonial and cultural use by the Burns Paiute Tribe.

CHANGES TO RULE:

635-043-0150

#### Burns Paiute Ceremonial Harvest Permits

Ceremonial harvest permits for use by the Burns Paiute Tribe (the "Tribe").¶

- (1) The Commission authorizes the harvest of deer, elk and pronghorn antelope by members of the Tribe for ceremonial and cultural 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 members 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 permits 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)~~ fifteen (15) 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 last day of the Department's unit wide, Any Legal Weapon controlled 100 series hunt in the Silvies and Malheur River WMUs for deer permits, January 1 through November 30 for elk permits, and January 1 through three days before the first last day of the Department pronghorn antelope season's unit wide, Any Legal Weapon controlled hunt in the Silvies and Malheur River WMUs (inclusive) for pronghorn antelope.¶
  - (f) Each permit shall be validated immediately upon successful harvest of a designated animal by blacking out in ink, or removing 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. Harvest of elk is restricted to archery equipment only from August 15 to October 15.¶
  - (i) If a ceremonial need arises after the end of authorized season dates and a previously issued ceremonial harvest tag from that year was not validated for harvest, the Tribe may request a date extension in writing.¶

- (A) Written request must include the ~~specific~~cultural or ceremonial need as determined by the Tribe, the requested new dates for hunt, and the original tag.¶
- (B) The species on the ceremonial harvest tag cannot be changed.¶
- (C) The Department will consider the request to avoid conflicts with ongoing hunting seasons and may limit the hunt area from the description in (3)(g).¶
- (D) If approved, the local Wildlife District staff from the Department will provide the revalidated tag to the Tribe.¶
- (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 496.138, ORS 496.012, 496.146, 496.162

Statutes/Other Implemented: ORS 496.138, ORS 496.012, 496.146, 496.162