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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
10/20/2021 10:42 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Include Elk in Urban Deer Population Control Program

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 12/17/2021 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: 12/17/2021

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/commission/minutes/>

NEED FOR THE RULE(S)

The incorporation of elk into the urban deer population control program allows for the application of defined procedures and requirements for issuing permits that allow cities the ability take elk in response to public nuisance.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

1. Staff report prepared for the Oregon Fish and Wildlife Commission hearing on 12/17/2021.

A copy of the rules and the other documents relied upon for this rulemaking [the above document(s)] are available from the Oregon Department of Fish and Wildlife, Wildlife Division, 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:

No major fiscal or economic effects are expected to result from these proposed rules.

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).

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s).

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

A. Fiscal impacts to state government agencies are not expected. The state agencies that are affected by the rule change are the Oregon Department of Fish and Wildlife (ODFW) and the Oregon State Police (OSP). However, the effect of including elk into the existing urban deer population control program is not expected to significantly increase administrative, operation, and or enforcement costs from current levels. The number of elk hunting tags given by ODFW will not change substantially and is not anticipated generate losses in revenue. OSP enforcement of wildlife laws will also not change substantially.

B. There is a projected increase in fiscal impacts to local government agencies with high elk populations. The cities are responsible for appointing an agent and all costs associated with processing and distributing any elk 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 based on locality.

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

(2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s);
No compliance effects are expected for small businesses. There is a potential that small businesses in areas with high elk populations, particularly licensed meat processing businesses, may experience a small increase in sales based on the additional elk taken. These impacts are varied and depend heavily on location of cities with elk population issues. In general, it is expected that there would be little to no impacts to small businesses, salvaged elk meat is to be donated to local food banks and or other 503(c)(3) organization and shall not be sold, bartered, or exchanged in the context of these rules.

(b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s);

These types of compliance costs are not anticipated for small businesses at this time. The city/local government agency that applies for a permit to take elk under this urban population control program must ensure that the agent that takes the elk report the following information to ODFW or a person authorized to enforce wildlife laws: name and phone number of the person reporting the take; the permit number; number and sex of animals taken (including antler points if bulls are taken); location/address where take occurred; time of take; destination of carcasses; status of biological samples (if requested to take samples).

(c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to

comply with the rule(s).

These types of compliance costs are not anticipated for small businesses at this time. The city/local government agency that was authorized a permit under this population control program is responsible for all processing and distribution fees for any elk taken.

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

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

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. The agency is engaging with the public through this noticed rulemaking process. Public correspondence will also be part of the Commission meeting for December 2021, when these rule amendments will be decided upon.

RULES PROPOSED:

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

AMEND: 635-043-0250

RULE SUMMARY: The proposed rules would include elk in the urban deer population control pilot program that was established in response to Senate Bill 373 (2017).

CHANGES TO RULE:

635-043-0250

Purpose of the Urban Deer and Elk Population Control Pilot Program

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

Statutory/Other Authority: ORS 496.012, 496.162, 498.002, 498.006, 498.012, Or Laws 2017, ch 331, § 1-3, compiled as a note after ORS 498.012, Senate Bill 373761 (20217)

Statutes/Other Implemented: ORS 496.012, 496.162, 498.002, 498.006, 498.012, Or Laws 2017, ch 331, § 1-3, compiled as a note after ORS 498.012, Senate Bill 761 (2021)

AMEND: 635-043-0260

RULE SUMMARY: The proposed rules would include elk in the urban deer population control pilot program that was established in response to Senate Bill 373 (2017).

CHANGES TO RULE:

635-043-0260

Permit to Control Urban Deer and Elk Application Requirements

Before requesting a kill permit to conduct urban deer or elk 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 or elk.¶

(2) Adopt an ordinance, resolution or order declaring that deer or elk 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 deeror elk population levels within city limits.

Statutory/Other Authority: ORS 496.012, 496.162, 498.002, 498.006, 498.012, Or Laws 2017, ch 331, ¶ 1-3, compiled as a note after ORS 498.012, Senate Bill 373761 (2017)

Statutes/Other Implemented: ORS 496.012, 496.162, 498.002, 498.006, 498.012, Or Laws 2017, ch 331, ¶ 1-3, compiled as a note after ORS 498.012, Senate Bill 761 (2021)

AMEND: 635-043-0270

RULE SUMMARY: The proposed rules would include elk in the urban deer population control pilot program that was established in response to Senate Bill 373 (2017).

CHANGES TO RULE:

635-043-0270

Department and City Responsibilities

(1) In cities where the Department determines the deer or elk population does constitute a public nuisance as defined in ORS 498.012, or it presents health, safety or property damage concerns, the Department will:¶

(a) Designate dates when take is allowed.¶

(b) Determine the number and sex of deer or elk to be taken. The number of deer or elk 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 or elk are to be taken.¶

(b) Designate the manner of taking deer or elk, which may be by use of firearms or by live capture;¶

(A) It is unlawful to use any poisoning, immobilizing, or tranquilizing drug or chemical to take or euthanize deer or elk 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 or released. ¶

(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-lead ammunition must be used if animals are euthanized with a firearm.¶

(c) Designate an agent(s) with appropriate qualifications to take deer and elk.

Statutory/Other Authority: ORS 496.012, 496.012, 498.002, 498.006, 498.012, Or Laws 2017, ch 331, ¶ 1-3, compiled as a note after ORS 498.012, Senate Bill ~~373~~761 (2021)

Statutes/Other Implemented: ORS 496.012, 496.012, 498.002, 498.006, 498.012, Or Laws 2017, ch 331, ¶ 1-3, compiled as a note after ORS 498.012, Senate Bill 761 (2021)

AMEND: 635-043-0280

RULE SUMMARY: The proposed rules would include elk in the urban deer population control pilot program that was established in response to Senate Bill 373 (2017).

CHANGES TO RULE:

635-043-0280

Agent Authorization to Take Deer and Elk on Other than City Owned Property

(1) Any agent of the city who takes a deer or elk on property other than city owned property must have in possession written authority to act as the agent of the landowner or lawful occupant of the land which includes:¶

(a) The date of issuance of the authorization;¶

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

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

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

(2) Any agent who takes deer or elk 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 or bulls are taken);¶

(d) Location/address where take occurred;¶

(e) Time of take;¶

(f) Destination of carcasses.¶

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

Statutory/Other Authority: ORS 496.012, 496.162, 498.002, 498.006, 498.012, Or Laws 2017, ch 331, ¶ 1-3, compiled as a note after ORS 498.012, Senate Bill ~~373~~761 (2021)

Statutes/Other Implemented: ORS 496.012, 496.162, 498.002, 498.006, 498.012, Or Laws 2017, ch 331, ¶ 1-3, compiled as a note after ORS 498.012, Senate Bill 761 (2021)

AMEND: 635-043-0290

RULE SUMMARY: The proposed rules would include elk in the urban deer population control pilot program that was established in response to Senate Bill 373 (2017).

CHANGES TO RULE:

635-043-0290

Salvage of Deer and Elk

(1) 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. ¶

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

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

(4) The city may sell hides and antlers from deer and elk 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 635-200-0050(4).

Statutory/Other Authority: ORS 496.012, 496.162, 498.002, 498.006, 498.012, Or Laws 2017, ch 331, ¶ 1-3, compiled as a note after ORS 498.012, Senate Bill ~~373~~761 (2021)

Statutes/Other Implemented: ORS 496.012, 496.162, 498.002, 498.006, 498.012, Or Laws 2017, ch 331, ¶ 1-3, compiled as a note after ORS 498.012, Senate Bill 761 (2021)