

Secretary of State

NOTICE OF PROPOSED RULEMAKING HEARING*

A Statement of Need and Fiscal Impact accompanies this form.

Oregon Department of Fish & Wildlife / Wildlife Div	635
Agency and Division	Administrative Rules Chapter Number

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Rules Coordinator	Address	Telephone

RULE CAPTION

Amend rules regarding the Greater Sage-Grouse Conservation Assessment and Strategy for Oregon

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

December 3, 2010	8:00 a.m.	6221 NE 82 nd Ave Portland, OR 97220	Fish and Wildlife Commission
Hearing Date	Time	Location	Hearings Officer

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*Auxiliary aids for persons with disabilities are available upon advance request.***RULEMAKING ACTION**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

ADOPT:**AMEND:** OAR 635-140**REPEAL:****RENUMBER:****AMEND & RENUMBER:**

Stat. Auth. : ORS 496.012, 496.138, 496.146, 496.162

Other Auth.:

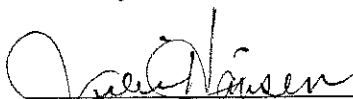
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162

RULE SUMMARY

Amend rules regarding the Greater Sage-Grouse Conservation Assessment and Strategy for Oregon. Amendments include, a refinement of population estimates, implementation accomplishments, and proposed core area approach to habitat mitigation.

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

December 3, 2010

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)


Julie Hansen

October 15, 2010

Signature

Printed name

Date

*Hearing Notices published in the Oregon Bulletin must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm the preceding workday. ARC 920-2005

STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Oregon Dept of Fish and Wildlife / Wildlife Division

635

Agency and Division

Administrative Rules Chapter Number

Amend rules regarding the Greater Sage-Grouse Conservation Assessment and Strategy for Oregon

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of: Amend the rules relating to the Greater Sage-Grouse Conservation Assessment and Strategy for Oregon and associated rules and amendments of division 140.

Statutory Authority: ORS 496.012, 496.146, 496.162

Other Authority:

Stats. Implemented: ORS 496.012, 496.146, 496.162

Need for the Rule(s): Update of the plan created under the following: Members of the Western Association of Fish and Wildlife Agencies signed an MOU in 1999 and were joined by federal agencies in 2000 to develop a conservation assessment and management strategy for sage grouse. Each state committed to proactively contribute to local needs of sage grouse and sagebrush shrub steppe habitat management thus contributing an overall national conservation plan. These rules are needed to adopt the Oregon Sage Grouse Conservation Plan.

Documents Relied Upon, and where they are available: The plan cites numerous scientific and historical documents. Key documents relied upon include: Memorandum of Understanding (1999) signed by ODFW and 10 western states that directs states to take the lead in sage grouse conservation; The Conservation Assessment of Sage Grouse and Sagebrush Habitats (Connelly et al. 2004), and Management guidelines for sage grouse populations and their habitats (Connelly et al. 2000), WAFWA's Greater sage-grouse comprehensive conservation strategy (Stiver et al. 2006) and Oregon Conservation Strategy. (ODFW 2005).

Fiscal and Economic Impact:

See attached

Statement of Cost of Compliance:

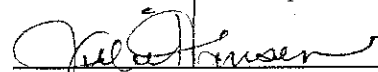
1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):
2. Cost of compliance effect on small business (ORS 183.336):
 - a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:
 - b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:
 - c. Equipment, supplies, labor and increased administration required for compliance:

How were small businesses involved in the development of this rule?

Administrative Rule Advisory Committee consulted?:

If not, why?: No

Staff held seven public meetings and meetings with four County Courts in the planning area. The meetings took place statewide from July 6 to September 30, 2010. Correspondence from interested and affected persons and testimony are accepted into the record and considered as part of the rulemaking process.


Signature

Julie Hanson

Printed name

10/15/10

Date

Fiscal and Economic Impact Statement for the December 3, 2010 Hearing
in the Matter of Rules Relating to the Revision of the Greater Sage Grouse
Conservation Assessment and Strategy for Oregon

Fiscal and economic impact: Rule changes are being proposed to update the Greater Sage Grouse Conservation Assessment and Strategy for Oregon. This update is part of a 5-year interval of updates to the first conservation plan at the direction of the Oregon Sage-Grouse and Sagebrush Habitat Conservation Team. The plan describes the conservation needs for sage grouse and their habitat and provides the framework with which sage grouse and their habitats can be preserved into the future. The rule change includes changes to plan population and habitat objectives as part of the 5-year update. The plan makes specific recommendations related to the mitigation of impacts to greater sage-grouse habitat of commercial activities and some aspects of land management policy. Areas in which the plan has recommendations include those identified as risk factors for listing under the federal Endangered Species Act. They are:

- 1) Wildfire
- 2) Prescribed fire
- 3) Livestock grazing
- 4) Juniper expansion
- 5) Invasive vegetation
- 6) Vegetation treatment
- 7) Realty
- 8) Energy development and transmission
- 9) Recreation
- 10) Predation
- 11) West Nile virus
- 12) Regulatory Mechanisms

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

A. The only state agency which will be affected by this rule change is the Oregon Department of Fish and Wildlife (ODFW.) No significant changes to ODFW operations or expenditures are expected as a result of these rule changes. The proposed rule changes would not have any direct fiscal impact on other government entities. Neither the Oregon Fish and Wildlife Commission (OFWC) nor ODFW have legal authority to regulate management of lands owned by other state agencies, counties, or the federal government. Rather, the Department's authority is limited to making recommendations concerning the mitigation of impacts to greater sage-grouse habitat. If recommendations are adopted by government entities under those entities' own legal authorities, those recommended mitigation actions may result in fiscal impacts on governments. Because it

is uncertain whether and how ODFW recommendations will be adopted by other governmental entities within the scope of their legal and regulatory authority, the Department cannot predict what those impacts may be.

Further, the underlying objective of the conservation assessment and strategy and the recommendations therein is to conserve greater sage-grouse in Oregon. The intent is to avoid a listing of the species under the federal or the Oregon Endangered Species Acts (ESAs.) The federal and Oregon ESAs include strict provisions that regulate and, in some circumstances, prohibit, harassment and taking of listed species. Those measures can prevent land development and restrict land management and human activity and impose costs upon governments. If implementation of the rule amendments helps Oregon avoid a greater sage-grouse listing, Oregon could avoid the negative economic impacts that are often associated with listing.

ODFW assumes responsibility for the management of sage grouse in Oregon according to its statutory obligation and authority for most wildlife in Oregon. ODFW has therefore taken a lead role in crafting the sage grouse conservation strategy. The strategy does not have explicit requirements for sage grouse monitoring that would impose costs on ODFW. Monitoring takes place regardless of the plan or its revision.

B. No units of local government are expected to be affected by these rules. County governments may have the option of following ODFW recommendations contained within the conservation and management plan. Laws governing a county may require a county to follow ODFW recommendations. In either case, any costs incurred by doing so would be the result of either the county's choice to follow the recommendations, or laws governing a county; again ODFW has no regulatory authority to implement its recommendations as they pertain to the management of public and private lands. The OFWC's adoption of these rule amendments (and the recommendations reflected in the amendments) would not have a direct effect on a county. The size of the fiscal impact to the county would depend on whether and how the plan's recommendations are adopted by a county, and cannot be predicted at this point.

Any avoidance of a federal or Oregon Endangered Species Act listing will result in a reduction of management costs to counties, as described above.

C. The public could be affected by the adoption of these rules. The adoption of the proposed rule amendments would not have any direct fiscal impact on the public. There is no "cost of compliance" for businesses. As mentioned above, neither the Commission nor the Department of Fish and Wildlife have legal authority to regulate private behavior concerning greater sage-grouse (except through regulation of hunting, and regulation of use of state-owned wildlife areas) or to regulate management of lands owned by private entities, other state agencies, counties, or the federal government. The department's authority is limited to making recommendations

concerning mitigation actions to protect sage grouse habitat. It is only the adoption of these recommendations by individuals, other state agencies, counties, or the federal government under these entities' own legal authorities that may result in fiscal impacts on businesses and the public. However, because such adoption is speculative and depends upon the legal authority and policy choices of other government entities, the Department cannot predict the magnitude of those impacts to the public or to businesses.

As mentioned before, to the extent that the conservation assessment and strategy is successful at its objective of avoiding a state or federal Endangered Species Act listing, costs to businesses can be avoided. The ESAs include strict measures that prohibit harm to listed species through harassment and taking. The measures have the potential to prevent land development and restrict land management, sometimes with negative economic impacts to individuals, businesses, and governments. The economic impacts of an ESA listing are likely to be substantial, and this rule change has the potential to avoid these costs if recommendations are followed.

Individuals and businesses that choose to implement sage grouse conservation actions could incur costs to undertake such actions and to monitor the effectiveness of these actions. It may be possible that free or low-cost conservation actions could be taken by the public to help to preserve sage grouse and their habitat. One of the purposes of the plan is to inform the public of the ways in which their actions on private land may benefit sage grouse conservation.

Most businesses affected by these rules are believed to be "small business."

The rules are believed to be fully compatible with legislative direction on the goals of wildlife management in Oregon.

We do not believe that a less intrusive or less costly alternative adaptation to only small business is consistent with the purpose of this rule.