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BEV CLARNO  
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JEFF MORGAN  
INTERIM DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION  
STEPHANIE CLARK  
DIRECTOR  
  
800 SUMMER STREET NE  
SALEM, OR 97310  
503-373-0701

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

CHAPTER 635  
DEPARTMENT OF FISH AND WILDLIFE

**FILED**  
08/17/2020 4:04 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Adds wild turkey as an allowed species under the Wildlife Control Operator (WCO) permit.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 10/09/2020 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.*

CONTACT: Roxann Borisch  
503-947-6314  
roxann.b.borisch@state.or.us

4034 Fairview Industrial Drive SE  
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: 10/09/2020

TIME: 8:00 AM - 5:00 PM

OFFICER: ODFW Commission

ADDRESS: Roxann Borisch  
4034 Fairview Industrial Drive 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 increase in nuisance and damage complaints specific to wild turkeys, particularly in incorporated city limits, has created a need for additional capacity to address these complaints. This rule change allows WCOs to address wild turkey complaints

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

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:

The fiscal and economic impact of allowing Wildlife Control Operators (WCOs) to control wild turkey is expected to be minor, likely positive in nature, as this would allow for private WCOs to provide services that address damage and nuisance while adhering to the Oregon Wild Turkey Management Plan. Additionally, changing the reporting requirement to bi-monthly is more efficient use of WC time for record submission to Department.

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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).*

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

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. There is a potential for some benefits for local governments that have directly encountered damage and or nuisance issues from wild turkeys on their public lands and or facilities, these impacts are discussed further below, as they affect landowners in general.

The Department is not able to provide a monetary estimate of the economic impact of these rule amendments, the economic effect on the general public is expected to be positive. The amendments provide clarification on the requirements and restrictions for wildlife control activities for wild turkey, especially in incorporated city limits and associated urban developments, while promoting sound wildlife management. The provision to allow for an agent to act on the behalf of a landowner or occupant to remove wild turkey, causing damage, posing a public health threat or creating a public nuisance.

Amendments address the issue of increasing wild turkey damage and nuisance primarily in proximity to private residences, which have increased to approximately 100 per year statewide. Complaints range from destruction of gardens and landscaping, to fecal accumulation on personal property, and safety concerns from aggressive birds. WCOs provide a commercial alternative for landowners to deal with nuisance wildlife, particularly where the Department lacks the capacity to respond.

(2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s);

There are approximately 65 permitted Wildlife Control Operators, these are composed of individuals, business owners, or business owner's designees that charge a fee to control furbearers, unprotected mammals (excluding moles) and western gray squirrels causing damage, creating a public nuisance or posing a public health or safety concern in

incorporated city limits and associated urban development areas. They are permitted by the Department and governed by a set of rules. The amendments provide clarification that WCOs can provide services to control wild turkey, in general is beneficial for WCOs.

WCOs will be required to follow game animal carcass disposition rules, including salvaging edible wild turkey carcasses according to 635-002-0005. Translocation of live wild turkeys will be coordinated with local Department biologists and adhere to the Oregon Wild Turkey Management Plan. Compliance costs associated with these requirements not expected to be significant in nature and reflect control procedures for other species.

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

No additional costs anticipated.

(c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

No additional costs anticipated.

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

Small businesses were not involved in the development of these rules.

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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:

635-435-0005, 635-435-0010, 635-435-0015, 635-435-0025, 635-435-0050, 635-435-0055

AMEND: 635-435-0005

RULE SUMMARY: Amendment to Division 435 adds wild turkey as an allowed species under the Department issued WCO permit, defines wild turkey, and specifies parameters within which wild turkey control may be conducted; also changes reporting requirement for WCO permittees to bi-monthly.

CHANGES TO RULE:

635-435-0005

Definitions ¶¶

For the purposes of these rules the following definitions apply:¶¶

(1) "Agent" means an individual or business conducting wildlife control activities for a fee for a property owner, legal occupant, local jurisdiction or agency to take furbearers, unprotected mammals, wild turkeys and western

gray squirrels for the purpose of reducing property damage, removing nuisance animals, or resolving public health threat or safety concerns caused by wildlife.¶

(2) "Damage" means loss of or harm inflicted on land, livestock or agricultural or forest crops.¶

(3) "Department" means Oregon Department of Fish and Wildlife (ODFW).¶

(4) "Euthanasia" means to humanely end the life of an individual animal by a person in a way that minimizes or eliminates pain and distress as defined in the "American Veterinary Medical Association (AVMA) Guidelines for the Euthanasia of Animals: 2013 Edition."¶

(5) "Furbearers" are beaver, bobcat, fisher, marten, mink, muskrat, otter, raccoon, red fox, and gray fox. For any person owning, leasing, occupying, possessing or having charge of or dominion over any land (or an agent of this person) who is taking or attempting to take beaver or muskrat on that property, these two species are considered predatory animals.¶

(6) "Notification" means that the Wildlife Control Operator (WCO) conducting wildlife control activities has been contacted by the client or designee by phone, text, email, fax, or in person that a trap has been closed, with a live animal inside.¶

(7) "Possess" means to have control or exercise dominion over any wildlife or wildlife parts (OAR 635-045-0002(53)).¶

(8) "Predatory animals" means coyotes, rabbits, rodents, and feral swine which are or may be destructive to agricultural crops, products and activities (ORS 610.002 & 610.105). This definition is applicable where wildlife is taken under the authority of one who owns leases, occupies, possesses or has charge or dominion over the land. Beavers, muskrats, western gray squirrels (*Sciurus griseus*), gophers, mountain beaver (boomer), marmot, nutria, and porcupine causing damage on private property are defined as predatory animals under ORS 610.002.¶

(9) "Prohibited species" means wildlife that the commission has placed on the Prohibited list in its Wildlife Integrity Rules (OAR 635-056-0050 & 635-056-0130).¶

(10) "Protected wildlife" means any species that meets any of the following definitions: "game mammals" as defined in OAR 635-045-0002, "game birds" as defined in OAR 635-045-0002, "furbearers" as defined in OAR 635-045-0002, "threatened and endangered species" as listed in OAR 635-100-0125, or "nongame wildlife protected" as defined in OAR 635-044-0130 or is otherwise protected by statute or law.¶

(11) "Public display" means to place or locate wildlife so that it may be viewed or accessed directly by the public.¶

(12) "Public Nuisance" means loss of or harm inflicted on persons, gardens, ornamental plants, ornamental trees, pets, vehicles, boats, structures, or other personal property (ORS 498.012).¶

(12~~3~~) "Unprotected Mammals" means badger, coyote, gophers (*Thomomys bottae*, *T. bulbivorus*, *T. mazama*, *T. talpoides* and *T. townsendii*), moles (*Scapanus townsendii*, *S. orarius* and *S. latimanus*), mountain beaver (*Apolodontia rufa*), yellowbellied marmots (*Marmota flaviventris*), nutria, opossum, porcupine, spotted skunk, striped skunk, and weasel. For any person owning, leasing, occupying, possessing or having charge of or dominion over any land (or an agent of this person) who is taking or attempting to take coyote, gophers, mountain beaver (boomer), marmot, nutria, or porcupine on that property, these six species are considered to be predatory animals.¶

(13~~4~~) "Wildlife Control Operator" (WCO) means an agent, who is the principal manager or business owner, or employee of the business listed on the WCO permit and responsible for activities conducted in the course of wildlife control activities.¶

(15) "Wild Turkey" means turkeys (*Meleagris gallopavo*) that are free roaming on public or private lands and not being held under domestic management confinement and where there has been no report to the Department and/or local authorities from a landowner, manager, or occupant or their representative of specifically identified and described turkey(s) having escaped domestic management confinement.

Statutory/Other Authority: ~~496.138~~, ORS Ch. 496.012, ~~496.138~~, 496.146, 496.162

Statutes/Other Implemented: ~~496.138~~, ORS Ch. 496.012, ~~496.138~~, 496.146, 496.162

AMEND: 635-435-0010

RULE SUMMARY: Amendment to Division 435 adds wild turkey as an allowed species under the Department issued WCO permit, defines wild turkey, and specifies parameters within which wild turkey control may be conducted; also changes reporting requirement for WCO permittees to bi-monthly.

CHANGES TO RULE:

635-435-0010

Permit Required to Capture, Possess, or Transport Wildlife ¶

(1) A WCO permit is required for any individual, business owner, or the business owner's designee charging a fee to control bats, furbearers, unprotected mammals (excluding moles (*Scapanus* spp.), wild turkeys and western gray squirrels causing damage, creating a public nuisance or posing a public health or safety concern; and for the offsite transportation of any live wildlife;¶

(a) A WCO permit is not required for the onsite capture and euthanasia of species defined as "predatory animals".¶

(b) Federal employees of the U.S. Department of Agriculture, Animal Plant and Health Inspection Service-Wildlife Services and, county or municipality employees, working in their official capacity, are exempt from this requirement.¶

(c) WCO permittees must comply with all state wildlife laws and regulations, and all activities must be in compliance with conditions specified by these rules, permit or authorization from the Department.¶

(2) A permit allows a WCO to:¶

(a) Capture, possess, or transport furbearers, predatory animals, wild turkeys, western gray squirrels, unprotected mammals and all snakes.¶

(b) Humanely euthanize wildlife authorized under this permit using methods defined by the "American Veterinary Medical Association (AVMA) Guidelines for Euthanasia of Animals: 2013 Edition" except for the following species of snakes which shall be relocated:¶

(A) Willamette Valley Populations of Western Rattlesnake (*Crotalus oreganus*);¶

(B) Sharptail snake (*Contia tenuis*);¶

(C) Common Kingsnake (*Lampropeltis getula*);¶

(D) California Mountain Kingsnake (*Lampropeltis zonata*);¶

(E) Western Ground Snake (*Sonora semiannulata*).¶

(c) Collect and dispose of animals directly related to WCO activities.¶

(3) WCO activities for all bat species are as follows:¶

(a) Exclusion and eviction permitted except during the months of June, July and August unless the permittee receives prior authorization from the Department. For purposes of this rule, "exclusion" and "eviction" are defined as follows:¶

(a) "Exclusion" means taking actions to prevent an animal from occupying a space or structure¶

(b) "Eviction" means creating conditions which encourages an animal to move out, and remain out of an area.¶

(c) Capture of bats from indoor areas not associated with roosting, hibernaculum and nurseries is permitted year round, provided that the bat is immediately released outdoors or taken to a licensed wildlife rehabilitator.¶

(4) A permit does not allow a WCO to transport, for the purposes of release, any wildlife captured under terms of the WCO permit except for;¶

(a) Western Gray Squirrel, Marten and Fisher¶

(b) Reptiles listed in subsection (2),¶

(c) Badger and Beaver with prior approval from the Department.¶

(d) Wild Turkey with prior approval from the local Department District Wildlife Biologist. Relocation must adhere to protocols in the Oregon Wild Turkey Management Plan (OAR 635-135-0001).¶

(5) A WCO permit does not authorize the permittee to intentionally capture, possess, or transport:¶

(a) Wildlife not authorized under a WCO permit.¶

(b) Species protected by other state or federal law.¶

(c) Species protected by other state or federal law caught incidentally must be released immediately onsite.

Statutory/Other Authority: ORS Ch. 496.012, 496.138, 496.146, 496.162, ~~610.005~~

Statutes/Other Implemented: ORS Ch. 496.012, 496.138, 496.146, 496.162, ~~610.002, 610.105~~

AMEND: 635-435-0015

RULE SUMMARY: Amendment to Division 435 adds wild turkey as an allowed species under the Department issued WCO permit, defines wild turkey, and specifies parameters within which wild turkey control may be conducted; also changes reporting requirement for WCO permittees to bi-monthly.

CHANGES TO RULE:

635-435-0015

#### Requirements for Wildlife Control Operator Permit ¶¶

- (1) WCO permits may be issued to either an individual or business listed on the application. A business or business owner is not required to take the WCO test if they do not conduct any wildlife control activities. A biennial, \$64.50 non-refundable WCO permit fee is required for each WCO business; and each permit will cover all employees eligible to conduct WCO activities. A WCO permit for business requires a minimum of one employee designee passing the WCO test, administered by the Department. ¶¶
- (2) All individuals > 18 years of age conducting wildlife control activities must pass the Department administered WCO test with a minimum test score of 80%. A WCO training manual is available on the [ODFW Department](#) website. A \$25 non-refundable test administration fee is required of test applicants for each test administered. ¶¶
- (3) Submittal of a completed WCO application form shall include: ¶¶
  - (a) Business information including whether the applicant is an individual, partnership, corporation, Limited Liability Company or other legal entity. ¶¶
    - (A) If a partnership, the application must provide the full names and addresses of the partners. ¶¶
    - (B) If a corporation, the application must provide the full name and addresses of all officers, directors and stockholders. ¶¶
    - (C) If a Limited Liability Company, the application must provide the full names and addresses of all members and managers. ¶¶
    - (D) If the application is structured as a tiered organization, the application must provide the full names and address of all of the partners; or officers, directors and stockholders; or members and managers of each substituent entity within the tiered organization; ¶¶
  - (b) List of each employee who will be conducting WCO activities and has passed the WCO test. ¶¶
- (4) Upon application approval, applicants must submit a \$64.50 non-refundable WCO Permit fee. ¶¶
- (5) The Department must notify an applicant that it intends to deny the application within 30 days of the date a completed application is received. The proposed denial will be based on a review of the applicant's information not meeting the conditions defined in these rules. ¶¶
- (6) A WCO permit is not required for any person younger than 18 years of age that is directly associated with a business that has at least one employee that has passed the WCO test who is mentoring the young individual. ¶¶
- (7) Permits are valid for up to two consecutive calendar years from the date of issue. ¶¶
- (8) WCO permit renewal by an individual or business requires: ¶¶
  - (a) Submission of renewal application and remittance of a \$64.50 non-refundable application fee. ¶¶
  - (b) Individual Applicants and Employees listed on the business renewal application must: ¶¶
    - (A) Provide documentation with the renewal application of 12 hours of Department approved ¶¶ continuing education within the previous two calendar years; or ¶¶
    - (B) Retake the WCO test administered by the Department with a minimum score of 80%. ¶¶
  - (c) Failure to renew a WCO permit, due to expirations or to permit revocation requires the permittee to apply as a new applicant with all employees listed on the application required to retake the WCO test with a passing score. ¶¶
- (9) A WCO permit revoked for violation of wildlife rules or conditions of the permit may be denied reapplication by the Department for up to five years. ¶¶
- (10) Businesses must notify the Department within 14 business days of termination or removal of an employee

listed on their WCO permit.

Statutory/Other Authority: ORS Ch. 496.012, ORS 496.138, ORS 496.146, ORS 496.162

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

AMEND: 635-435-0025

RULE SUMMARY: Amendment to Division 435 adds wild turkey as an allowed species under the Department issued WCO permit, defines wild turkey, and specifies parameters within which wild turkey control may be conducted; also changes reporting requirement for WCO permittees to bi-monthly.

CHANGES TO RULE:

635-435-0025

Disposition of Wildlife ¶

- (1) All wildlife captured, held, or transported under a WCO Permit remains the property of the State of Oregon and cannot be sold, traded, bartered, or exchanged except as allowed by OAR chapter 635 dxivision 200.¶
- (2) Wildlife captured, held, or transported under the terms of the WCO permit shall not be intentionally displayed for public exhibit.¶
- (3) Cage traps or restraining traps shall be inspected for capture success at a minimum of once every 48 hours. The local Department district biologist will consider extenuating circumstances to extend check time on a case by case basis upon contact from the WCO. Killing traps or traps set for predatory animals as defined in ORS 610.002 must be checked within the time periods specified in OAR Chapter 635, Division 50. The inspection and removal of any captured animal shall be done by the person who set the trap or the owner of the land where the trap is set, or designee of either.¶
- (4) WCO's must conduct one of the following within 24 hours of notification of possession of wildlife:¶
  - (a) Humanely euthanize the animal(s) in a manner consistent with the "AVMA Guidelines for Euthanasia of Animals: 2013~~20~~ Edition;" or¶
  - (b) Release animal on site; or¶
  - (c) Relocate the animal (with prior approval from the Department).¶
- (5) Wildlife held, relocated, or used for attracting offspring must be supplied with fresh drinking water within a period of 4 hours of possession and must be provided access to clean drinking water at reasonable intervals, not to exceed 8 hours between water replenishment.¶
- (6) A WCO capturing a wild animal~~life~~ must make reasonable efforts to locate and capture dependent neonatal offspring. Lactating female wildlife and dependent neonates(s) may be kept in possession up to 72 hours or longer as approved by the Department.¶
- (7) Wildlife indicating symptoms of disease must be humanely euthanized consistent with ORS 498.016, or handled as directed by local Department district biologist or Department veterinarian.¶
- (8) A WCO must humanely euthanize prohibited species as identified in the Wildlife Integrity Rules (OAR 635-056-0050).¶
- (9) A WCO may sell, purchase or exchange the pelt, or any part thereof, of any legally taken furbearing or unprotected mammal as allowed by OAR 635-050-0045(3).¶
- (10) A WCO must salvage edible wild turkey carcasses according to 635-002-0005. A property owner or legal occupant cannot directly receive any part of a wild turkey removed from their property.

Statutory/Other Authority: ORS Ch. 496.012, 496.138, 496.146, 496.162

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

AMEND: 635-435-0050

RULE SUMMARY: Amendment to Division 435 adds wild turkey as an allowed species under the Department issued WCO permit, defines wild turkey, and specifies parameters within which wild turkey control may be conducted; also changes reporting requirement for WCO permittees to bi-monthly.

CHANGES TO RULE:

635-435-0050

Trap Tampering Prohibited ¶¶

(1) Any trap or capture device used by a permittee must be legibly marked or branded with either the individual or owner's business name and phone number, or the owner's furtaker license (brand) number or WCO number that has been assigned by the Department.¶¶

(2) It is unlawful to move or tamper with any trap or capture device set by a WCO or to remove wildlife from such a trap or capture device without written authorization of the WCO.

Statutory/Other Authority: ORS 496.012, 496.138, 496.146, 496.162

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

AMEND: 635-435-0055

RULE SUMMARY: Amendment to Division 435 adds wild turkey as an allowed species under the Department issued WCO permit, defines wild turkey, and specifies parameters within which wild turkey control may be conducted; also changes reporting requirement for WCO permittees to bi-monthly.

CHANGES TO RULE:

635-435-0055

Record Keeping and Reporting Requirements ¶

(1) Landowner or occupier of premises must sign an affidavit of damage designating the permitted WCO as his or her agent to address damage caused by any wildlife. The affidavits are required to be retained for one year by the permittee. ¶

(2) A complete record of the WCO activities must be maintained by permit holder on a WCO ~~calendar-month~~bi-annual report form provided by the Department for all wildlife captured on a WCO permit. ~~A copy of each signed affidavit~~ ¶

~~(3) Each permittee must be submitted with monthly report.~~ ¶

~~(3) WCO monthly report must be received by the Department by the 15th day of the following mo~~ a report of WCO activity in a legible document twice per year, by July 31 and January 31, to the Department. Reports are required ~~for periods when~~ to be submitted even if no wildlife control activity has occurred during the month.

Statutory/Other Authority: ORS 496.012, 496.138, 496.146, 496.162

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