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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 635
DEPARTMENT OF FISH AND WILDLIFE

FILED
08/25/2022 8:19 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Salmon Carcass Disposition

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 10/14/2022 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:
Lisa Kingsley
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 10/14/2022

TIME: 8:00 AM - 5:00 PM

OFFICER: Oregon Fish and Wildlife Commission

ADDRESS: The Mill Casino

3201 Tremont Avenue

North Bend, OR 97459

SPECIAL INSTRUCTIONS:

Because of the rapidly changing situation with COVID-19, all or portions of this hearing may be conducted virtually. Information will be posted on our website at <https://www.dfw.state.or.us/agency/commission/minutes/>

NEED FOR THE RULE(S)

House Bill 3191 (2021) directed the State Fish and Wildlife Commission to adopt rules to govern the disposition of adult hatchery-produced fish returning to hatchery facilities.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Staff report prepared for the Oregon Fish and Wildlife Commission hearing on 10/14/2022.

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, Fish Division, 4034 Fairview Industrial Drive SE, Salem, Oregon 97302-1142. Contact Lisa Kingsley at 503-947-6233 or lisa.m.kingsley@odfw.oregon.gov to view by appointment between the hours of 8:00 a.m. and 4:00 p.m., on normal working days, Monday through Friday.

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

The Department has solicited input from representatives of underrepresented communities likely to be affected on whether the proposed rule will have a fiscal impact on the community, the extent of the fiscal impact, and whether the

FISCAL AND ECONOMIC IMPACT:

Fiscal and economic impacts discussed below pertain to the proposed rules at the time of the writing of this FIS.

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).

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

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

(A) The state agency that is be affected by these rules is the Oregon Department of Fish and Wildlife (ODFW). Under this proposed rule, in some scenarios ODFW may need to adjust the way it prioritizes the disposition of carcasses. Carcass placement is a high priority, but balanced below other factors including conservation goals, production goals, Tribal needs, and food utilization. This change in prioritization may impact the amount and use of ODFW revenues since the funds from carcass and egg sales are used to pay for deferred maintenance at hatcheries. If less revenues are generated from carcass sale this could lead to foregone hatchery maintenance or increased costs to other fund sources to cover the difference. Additional staff time and supplies will not be necessary to achieve the requirement that at least 45% of carcasses (averaged over 10 years beginning the first year after the rules are adopted) are retained and then placed seasonally at appropriate times in natural spawning and rearing areas, as ODFW already meets a 45% placement rate. The changes from the current levels of the agency's staffing are not anticipated to be significant, as existing staff will likely change work priorities to achieve the new carcass disposal and reporting requirements. It is anticipated there will be additional expenditures for supplies and services. ODFW may need to invest in additional freezer capacity and further analysis of non coded wire tag return rates. It is approximated that these additional costs are likely in the realm of \$25-\$35 thousand from rule adoption through the close of the 2023-25 Biennium.

B. Units of local government are not anticipated to be affected by the proposed rule.

C. The public is likely to be minimally affected by the proposed rule.

(2) Effect on Small Businesses:

(a) Estimate the number and type of small businesses subject to the rule(s);

HB 3191 (2021) also directed ODFW to prioritize the sale of eggs and carcasses to small businesses in Oregon counties with high unemployment rates. This may have the potential for a transfer of economic benefit from other small businesses in Oregon to those located in counties with weaker employment rates. While we do not currently have enough data to calculate any economic impact from this directive, it is important to note that this could potentially impact small businesses that currently purchase eggs and/or carcasses directly from ODFW.

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

ODFW anticipates there will be additional recordkeeping and administrative activities required to document compliance with this rule.

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

comply with the rule(s).

There are no expected professional services, equipment, or labor required for the public to comply with this rule. ODFW may need to invest in supplies and services, most notably increased refrigeration capacity, to achieve new hatchery carcass disposal requirements.

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

These concepts were presented in the 2017, 2019 (HB 2553), and 2021 (HB 3191) Legislative Sessions. Opportunities for public comment are also provided during the ODFW Commission process.

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

The Administrative Rule Advisory Committee was not consulted about these proposed rules. These concepts were presented in the 2021 Legislative Session under HB 3191 and went through the legislative process. At the Commission hearing, public correspondence and testimony is accepted into the record as part of the rulemaking process.

RULES PROPOSED:

635-007-0530, 635-007-1000

AMEND: 635-007-0530

RULE SUMMARY: This rule revision provides new guidance on the disposition of hatchery salmon and steelhead carcasses consistent with House Bill 3191 (2021).

CHANGES TO RULE:

635-007-0530

Sale of Salmon and Trout and Their Eggs ¶

(1) The Department will sell salmon and trout or the eggs of salmon and trout after first assuring that, within the capability of the Department to do so, the policy of the state as set forth in ORS 496.012 relating to trout and ORS 506.109 relating to salmon (food fish) has been met, and that such fish and eggs are surplus to the fish production needs of the state as determined by the Department in accordance with the established general priority for use of salmon eggs and fingerlings ~~an~~. Fish and eggs will be sold in accordance with statutes relative to handling of surplus property.¶

(2) ~~When selling established priorities, eggs will first be sold to those prospective purchasers who will directly or indirectly provide the greatest benefit to the public fisheries of Oregon~~ eggs and carcasses from hatchery facilities to provide revenues to support hatchery programs and facilities, the Department shall prioritize sales in the following order:¶

(a) Oregon small businesses in communities with high rates of unemployment;¶

(b) Other Oregon small businesses; and¶

(c) All other businesses.

Statutory/Other Authority: ORS ~~496, 506~~ 508.730

Statutes/Other Implemented: ~~ORS 496, 506~~ House Bill 3191 (2021)

AMEND: 635-007-1000

RULE SUMMARY: This rule revision provides new guidance on the disposition of hatchery salmon and steelhead carcasses consistent with House Bill 3191 (2021).

CHANGES TO RULE:

635-007-1000

Carcasses for Stream Enrichment ¶¶

~~(1) Before approving the use of fish carcasses or fish components for stream enrichment programs, the Fish Division must determine that the use~~
At least 45 percent of the carcasses from all adult hatchery-produced fish that return to hatchery facilities, averaged over 10 years, must be retained and placed at seasonally appropriate times in natural spawning and rearing areas to enhance nutrient recycling. Distribution of carcasses in any single year will take account of the following:¶¶

(1) Placement is consistent with the Department of Environmental Quality's requirements.¶¶

(2) The Department must review the disease history of the hatchery and particular fish stock, current fish health testing results, geographic location and history of fish disease, and presence of disease agents in the receiving stream and watershed as a whole ~~in order~~ to minimize the risk of introducing or disseminating disease agents into the receiving waters.¶¶

(3) Only fish that are killed as excess brood or that survive to spawn may be used for carcass distribution.¶¶

(4) Carcasses must be placed in the originating river basin or ~~where~~ locations identified in hatchery program management plans or other operational or conservation plans.¶¶

(5) The Fish Division may stop carcass distribution if pathogen levels increase in spawned adult fish during the spawning period.¶¶

Stat: Auth.: ~~ORS 496, 497, 498, 506 & 508~~

Statutory/Other Authority: ORS 506.050

Statutes/Other Implemented: ~~ORS 496, 497, 498, 506, 508~~ House Bill 3191 (2021)