

OFFICE OF THE SECRETARY OF STATE
DENNIS RICHARDSON
SECRETARY OF STATE

LESLIE CUMMINGS
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION
MARY BETH HERKERT
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
01/16/2019 5:05 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Update of the Oregon Wolf Conservation and Management Plan

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 03/15/2019 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: 03/15/2019

TIME: 8:00 AM - 5:00 PM

OFFICER: ODFW Commission

ADDRESS: Oregon Department of Fish
and Wildlife

4034 Fairview Industrial Drive SE
Salem, OR 97302

NEED FOR THE RULE(S):

Rule changes are being proposed to update the Department's 2010 Wolf Conservation and Management Plan. Most proposed changes represent clarifications of the intent of the existing wolf plan rules and have no substantive changes in defining ODFW operations. The proposed rules are believed to be fully compatible with legislative direction on the goals of wildlife management in Oregon.

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, Fish Division, 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.

FISCAL AND ECONOMIC IMPACT:

This statement is meant to highlight fiscal impact of the changes to the 2010 Wolf Plan only and not intended to be a comprehensive review of the entire Wolf Plan. Readers are referred to the detailed fiscal impact statement presented in 2010 at the October Commission meeting (Exhibit E, Attachment 2), as well as the Department Wolf Plan at https://www.dfw.state.or.us/Wolves/management_plan.asp, including the economic considerations chapter of the 2010 wolf plan at

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 state agencies that would be affected by the adoption of these rules are:

The Oregon Department of Fish and Wildlife (ODFW) through staff research, management activities, and policy implementation. Most changes in the Plan entail minimal changes to ODFW, and no changes to Oregon Department of Agriculture expenditures or activities. While Oregon State Police is affected by Wolf Plan enforcement, these changes will not affect enforcement procedures, requirements, or expenditures.

No units of local government are expected to be affected by these rules. No significant changes from the current levels of any local agencies' operations or expenditures are anticipated as a result of the adoption of these rules.

The public is not expected to be additionally impacted beyond the current Wolf Plan (2010).

Small businesses will continue to be impacted by wolves, but the changes to the wolf plan are not expected to increase or decrease the impacts to small businesses.

Landowners will have continued recordkeeping, but the changes to the wolf plan are not expected to increase or decrease the costs of these activities.

No additional equipment, supplies, labor or administration are anticipated due to the changes to the 2010 wolf plan.

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

Small business owners provided public testimony at ODFW Commission meetings. Groups representing small businesses (e.g. Oregon Farm Bureau, Oregon Cattlemen's Association) also provided input and testimony at numerous meetings during development.

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

Through four public hearings, public correspondence and testimony was received from stakeholder panels and members of the public. Numerous scheduled and impromptu meetings with stakeholders, the public, tribes, and state and federal agencies also occurred.

RULES PROPOSED:

635-110-0000, 635-110-0005, 635-110-0010, 635-110-0020, 635-110-0030, 635-110-0040

AMEND: 635-110-0000

RULE SUMMARY: Update the Oregon Wolf Conservation and Management Plan

CHANGES TO RULE:

635-110-0000

Wolf Conservation and Management Plan II

The document entitled "Oregon Wolf Conservation and Management Plan" ~~dated October~~ (Plan) dated March 2010 is incorporated here by reference as administrative rule. (This incorporation by reference includes the body of the Plan plus its Appendix A. Other appendices are excluded.) ~~Copies may be obtained at the Salem headquarters office of the Oregon Department of Fish and Wildlife, 4034 Fairview Industrial Drive S.E., Salem, OR 97302. This document~~ The Plan includes program direction, objectives and strategies to fulfill management, research, and habitat needs. It is also intended as an informational document to assist resource management agencies with their wildlife program. ~~As of January 10, 2014, those portions of the plan which authorize harassment or take of wolves are pre-empted in a portion of Oregon by the endangered status of the gray wolf under the federal Endangered Species Act. In the portion of Oregon where federal protections are reduced to a level below that of Oregon law, this plan governs harassment and take of wolves in Oregon~~ manage gray wolves in Oregon and defines the special status game mammal designation. Copies may be viewed on the Oregon Department of Fish and Wildlife (Department) website or obtained at the Salem headquarters office of the Oregon Department of Fish and Wildlife, 4034 Fairview Industrial Drive S.E., Salem, OR 97302.

Statutory/Other Authority: ORS 496.012, 496.138, 496.146, 496.162, 498.012, 496.004

Statutes/Other Implemented: ORS 496.171-.496.192, 497.298, 497.308, 498.002, 498.006, 498.012, 496.004

ADOPT: 635-110-0005

RULE SUMMARY: Update the Oregon Wolf Conservation and Management Plan

CHANGES TO RULE:

635-110-0005

Definitions

- (1) "Depredation" means an incident or event that results in the confirmed injury or death of lawfully present livestock on federal, state, tribal, or other public lands, or private lands, by one or more wolves.¶
- (2) "Identified circumstance" means a condition which:¶
 - (a) The Department determines, based upon its investigation of the situation, attracts wolves and fosters conflict between wolves and livestock; and¶
 - (b) The Department advises the landowner, livestock producer or grazing permittee to remedy; but¶
 - (c) The landowner, livestock producer or grazing permittee fails to remedy.¶
- (3) "In the area" means where the Department has determined the presence of the depredating wolves.¶
- (4) "Lethal take" means management actions resulting in the death of a wolf or wolves.¶
- (5) "Livestock" means ratites, horses, mules, jackasses, cattle, llamas, alpacas, sheep, goats, swine, domesticated fowl, bison, and working dogs, and any fur-bearing animal bred and maintained (commercially or otherwise) within pens, cages and hutches.¶
- (6) "Other wolf-livestock conflict" means testing, chasing, or otherwise disrupting livestock.¶
- (7) "Take", as defined by Oregon law [ORS 496.004(16)], means to kill or obtain possession or control of any wildlife.¶
- (8) "Working dogs" means guarding dogs and herding dogs.

Statutory/Other Authority: ORS 496.012, 496.138, 496.146, 496.162, 498.012, 498.014

Statutes/Other Implemented: ORS 496.012, 496.138, 496.146, 496.162, 498.012, 498.014

CHANGES TO RULE:

635-110-0010

Harassment and Take of Wolves during Phase I (Conservation) ¶

NOTE: As of ~~January~~March 105, 2014~~9~~, ~~these rule portions of these rules regarding harassment and take of wolves~~ are pre-empted in a portion of Oregon by the endangered status of the gray wolf under the federal Endangered Species Act. In the portion of Oregon where federal protections are reduced to a level below that of Oregon law, these rules govern harassment and take of wolves in Oregon. ¶

~~(1) This rule describes the types of harassment and take of wolves allowed by persons outside ODFW during Phase I (Conservation: 0-4 breeding pairs) as called for in chapter III of the Oregon Wolf Conservation and Management Plan. Other chapters of the Plan authorize ODFW to take wolves for other specified wildlife management purposes. For OAR 635-110-0010, 635-110-0020 and 635-110-0030, "livestock" means ratites, horses, mules, jackasses, cattle, llamas, alpacas, sheep, goats, swine, domesticated fowl, any fur-bearing animal bred and maintained (commercially or otherwise) within pens, cages and hutches, bison and working dogs. "Working dogs" means guarding dogs and herding dogs. ¶~~

~~(2) Non-injurious harassment factors and regulations related to harassment and take of wolves during Phase I of the Oregon Wolf Conservation and Management Plan. ¶~~

~~(2) Non-injurious harassment. ¶~~

~~(a) Non-injurious harassment means scaring off a wolf (or wolves) without doing bodily harm, and includes (but is not limited to) safely firing shots in the air, making loud noises or otherwise confronting the wolf (or wolves). ¶~~

~~(ab) Subject to the conditions specified in paragraph (c), the following persons may use non-injurious harassment against wolves without a permit: ¶~~

~~(A) Livestock producers (or their agents) on land they own or lawfully occupy; or ¶~~

~~(B) Grazing permittees (or their agents) legally using public land under valid livestock grazing allotments. ¶~~

~~(b) Non-injurious harassment means scaring off a wolf (or wolves) without doing bodily harm, and includes (but is not limited to) firing shots in the air, making loud noises or otherwise confronting the wolf (or wolves). ¶~~

~~(c) Non-injurious harassment is allowed without a permit under this rule only if: ¶~~

~~(A) The wolf (or wolves) is in the act of testing or chasing livestock, is attempting to test or chase livestock or is in close proximity of livestock; ¶~~

~~(B) The person encounters the wolf (or wolves) unintentionally (i.e., the person is not stalking or searching for wolves); ¶~~

~~(C), or otherwise disrupting livestock. ¶~~

~~(B) The harassment in fact does not result in injury to the wolf (or wolves); and ¶~~

~~(D) C) The harassment is reported to ODFW the Department within 48 hours. ¶~~

~~(d) Any non-injurious harassment that does not meet each requirement of this rule requires a permit in advance from ODFW the Department. ¶~~

~~(3) Non-lethal injurious harassment. ¶~~

~~(a) Non-lethal injurious harassment is conducted for the purpose of minimizing wolf-livestock conflict when livestock are present. Non-lethal injurious harassment means scaring off a wolf (or wolves) without killing but with some injury to the wolf. Wolves may be pursued (unintentional encounters are not required). ¶~~

~~(b) Subject to the conditions specified in paragraph (c), in addition to state or state authorized agents, the following persons may use non-lethal injurious harassment against wolves by permit: ¶~~

~~(A) Livestock producers (or their agents) on land they own or lawfully occupy; ¶~~

~~(B) Grazing permittees (or their agents) legally using public land under valid livestock grazing allotments. ¶~~

(b) Non-lethal injurious harassment means scaring off a wolf (or wolves) without killing but with some injury to the wolf. Wolves may be pursued (unless allowed by permit from the Department; onal encounters are not required);ly if:¶

(c) Non-lethal injurious harassment is allowed by permit from ODFW only if:¶

(A) ODFW The Department confirms wolf depredation on livestock or other wolf-livestock conflict in the area:

"Other wolf-livestock conflict" means loitering near, testing, chasing, or otherwise disrupting livestock;¶

(B) The applicant confers with ODFW the Department to determine the most effective harassment method;¶

(C) ODFW(s); ¶

(C) The Department considers the location of known den sites;¶

(D) The harassment in fact does not result in the death of a wolf;¶

(E) No identified circumstance exists that attracts wolf/livestock conflict; and¶

(F) The harassment is reported to ODFW the Department within 48 hours.¶

(d) Permits for non-lethal injurious harassment remain valid for the livestock grazing season in which issued, provided the livestock operator complies with all applicable laws, including permit conditions. The agency shall inform harassment permit holders of non-lethal methods for minimizing wolf-livestock conflict and provide assistance upon request. Receiving future lethal control permits is contingent upon documentation of efforts to use non-lethal methods.¶

(4) Relocation. ODFW will The department may authorize relocation by state personnel when a wolf (or wolves) becomes inadvertently involved in a situation, or is present in an area, that could result in conflict with humans or harm to the wolf, provided that ODFW the Department has no reason to believe that the wolf actually attacked or killed livestock or pets. The relocation will be designed to prevent conflict with humans or reduce the possibility of harm to the wolf. The wolf (or wolves) would be relocated to suitable habitat at the direction of ODFW the Department.¶

(5) Lethal take of wolves in the act of biting, wounding, killing or chasing livestock or working dogs.¶

(a) A person, or an agent as described in paragraph ¶

(b), may lethally take a wolf on land the person owns or lawfully occupies only if:¶

(A) The wolf is caught in the act of:¶

(i) Biting, wounding or killing livestock or working dogs; or¶

(ii) Chasing livestock or working dogs, if the person has first undertaken nonlethal actions as specified in (8)8

(b)(C) and (8)8(c) of this rule, and the taking occurs during a time period in which ODFW the Department has determined a situation of chronic depredation exists; and ¶

(B) No person has used bait or taken other intentional actions to attract wolves.¶

(b) A landowner or lawful occupant of land may authorize an agent to enter the land for the purpose of taking wolves pursuant to (5)5(a) on the landowner or occupant's behalf. The authorization must be in writing, be carried by the agent when wolves are taken, and must include:¶

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

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

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

(D) The expiration date of the authorization, which may not be later than one year from the issuance date.¶

(c) Any person who takes a wolf pursuant to (5)5(a) and (5)5(b) of these rules must make all reasonable efforts to preserve the scene, not remove or disturb the wolf carcass, and report the take to ODFW the Department within 24 hours.¶

(6) Lethal take to address chronic livestock depredation. ODFW The Department may authorize its personnel or authorized agents to use lethal force on a wolf or wolves it reasonably believes are responsible for chronic depredation upon livestock where each of the conditions in subsections (7) through (10) of this rule is satisfied. ODFW The department shall limit lethal force to the wolf or wolves it deems necessary to address the chronic depredation situation¶

(7) Conditions for Lethal Take by ODFW. ODFW the Department. The Department's discretionary authority for use of lethal force pursuant to this rule may be exercised if ODFW the Department:¶

- (a) Designates an Area of Known Wolf Activity, the boundary of which may be adjusted as new data or information become available;¶
- (b) Upon the designation of an Area of Known Wolf Activity, coordinates in a timely manner with potentially affected livestock producers and other relevant interests to provide information on:¶
 - (A) The provisions of the Oregon Wolf Conservation & Management Plan and associated rules;¶
 - (B) The current state of knowledge of wolf behavior, management, and conservation;¶
 - (C) Procedures for documenting and reporting wolf activity to ~~ODFW~~the Department, including depredations upon livestock, and¶
 - (D) Non-lethal measures, incentives and available assistance aimed at minimizing conflicts between wolves and livestock or domestic animals in the ~~a~~Area of Known Wolf aActivity;¶
- (c) Confirms an incident of depredation of livestock by a wolf or wolves;¶
- (d) Within 14 working days of ~~ODFW~~the Department's confirmation of the first incident of depredation in an area:¶
 - (A) Designates an Area of Depredating Wolves, the boundary of which may be adjusted as new data or information become available;¶
 - (B) Concurrent with the designation of an Area of Depredating Wolves, prepares and publicly discloses an area-specific wolf-livestock conflict deterrence plan in coordination with potentially affected landowners, livestock producers and other relevant interests. The plan shall identify appropriate non-lethal measures according to which measures are likely to be most effective in a given circumstance, including the nature of the livestock operations, habitat, and landscape conditions specific to the area, as well as particular times of the year or period of livestock production. The plan shall be based on information compiled by ~~ODFW~~Department before and/or during the planning effort on potentially successful conflict deterrence techniques, scientific research, and available financial resources and/or partnerships that may aid in the successful implementation of the plan. ~~ODFW~~The department may update an area-specific conflict deterrence plan as new data become available.¶
 - (e) Confirms a total of at least 4 qualifying incidents of depredation of livestock within the previous 6 months by the same wolf or wolves.¶
 - (f) Issues and makes publicly available, prior to the exercise of lethal force, a written determination by the ~~ODFW~~Department Director or director's designee to use lethal force to address a specified situation of chronic depredation, along with supporting findings that:¶
 - (A) The conditions of Sections 7, 8, and 9 of this rule have been satisfied;¶
 - (B) Livestock producers in the Area of Depredating Wolves have worked to reduce wolf-livestock conflict and are in compliance with wolf protection laws and the conditions of any harassment or take permits.¶
 - (C) The situation of wolf depredation upon livestock in the Area of Depredating Wolves is likely to remain chronic despite the use of additional non-lethal conflict deterrence measures; and¶
 - (D) The wolf or wolves identified for removal are those ~~ODFW~~the Department believes to be associated with the qualifying depredations, the removal of which ~~ODFW~~the Department believes will decrease the risk of chronic depredation in the Area of Depredating Wolves.¶
- (8) Qualifying Contingencies and Counting Incidents:¶
 - (a) An incident of depredation is a single event resulting in the injury or death of one or more lawfully present livestock that is reported to ~~ODFW~~the Department for investigation, and upon investigation by ~~ODFW~~the Department or its agent(s), ~~ODFW~~the Department confirms to have been caused by a wolf or group of wolves.¶
 - (b) A qualifying incident of depredation is a confirmed incident of depredation for the purposes of this rule if:¶
 - (A) The depredation is outside of an Area of Known Wolf Activity or Area of Depredating Wolves. Only the first confirmed depredation by a wolf or wolves may count as a qualifying depredation,¶
 - (B) In an Area of Known Wolf Activity, the landowner or lawful occupant of the land where the depredation occurred had:¶
 - (i) At least seven days prior to the incident of depredation, removed, treated or disposed of all intentionally placed or known and reasonably accessible unnatural attractants of potential wolf-livestock conflict, such as bone or carcass piles or disposal sites, and¶

(ii) Prior to and on the day of the incident of depredation, been using at least one measure ~~ODFW~~the Department deems most appropriate from non-lethal deterrence measures identified pursuant to section (7)(b)(D) to protect calving operations, nursing cattle, sheep operations, or other reasonably protectable situations, not including open range situations. Once a confirmed depredation has occurred in an Area of Known Wolf Activity and while ~~ODFW~~the Department is in the process of designating an Area of Depredating Wolves and creating an area-specific conflict deterrence plan, only one additional confirmed depredation in an area may count as a qualifying depredation under this subsection.¶

(C) In an Area of Depredating Wolves, the landowner or lawful occupant of the land where the depredation occurred had:¶

(i) Complied with subsection (B) of this section, and¶

(ii) Prior to and on the day of the incident of depredation was implementing at least one non-lethal measure identified in the area-specific conflict deterrence plan developed under subsection (7)(d)(B) that is specific to the location, type of livestock operation, time of the year, and/or period of livestock production associated with the depredation. The conflict deterrence plan measure implemented by a landowner or lawful occupant must address wolf-livestock conflict in open range situations when that situation exists.¶

(c) Human presence, when used as a non-lethal measure under this rule, is presence which could reasonably be expected to deter wolf-livestock conflict under the circumstances and, regardless of the temporal requirements of sections ~~(7)(b)(B)~~ and (C) of this rule, may be considered an appropriate non-lethal measure if it:¶

(A) Occurs at a proximate time prior to and in an area proximate to a confirmed depredation as determined by ~~ODFW~~the Department, and¶

(B) Indicates a timely response to wolf location information in situations of potential wolf-livestock conflict.¶

(9) Transparency and Public Disclosure.¶

(a) Except as provided in section (c) below, prior to using lethal force to address chronic wolf depredation, and in a timely fashion, ~~ODFW~~the Department shall document and make publicly available on at least its website:¶

(A)-The determinations and supporting findings referenced in section (7)(f) of this rule;¶

(B) Information including but not limited to summaries of confirmed incidents of depredation and associated depredation investigation reports, maps of areas of known wolf activity and areas of depredating wolves, including changes and amendments to those maps, and area specific conflict deterrence plans; and¶

(C) Documentation of measures implemented pursuant to Section 8 of this rule. In documenting the removal of unnatural attractants and implementation of conflict deterrence measures, the Department may rely upon documented personal observation and/or written statements by the owner or lawful occupant of the land where qualifying incidents of depredation have occurred that confirm the non-lethal deterrence measures being utilized prior to and at the time of the qualifying depredation.¶

(b) In any signed statements and other information publicly disclosed pursuant to this section, the Department shall redact from public disclosure the personal information of landowners, lawful occupants, or other relevant individuals consistent with the Oregon public records law, ORS Chapter 192.¶

(c) In the case where the conditions in Section ~~(7)(f)~~ of this rule have been met but strict compliance with the public disclosure requirements of this section cannot be accomplished without a delay that impedes ~~ODFW~~the Department's ability to pursue an immediately available opportunity to remove the wolf or wolves it reasonably believes responsible for chronic depredation prior to another depredation event on livestock, this section is deemed satisfied if, prior to the use of lethal force, ~~ODFW~~the Department:¶

(A) Provides email or phone notification from the ~~ODFW~~Department Director or designee to a list of interested stakeholders communicating the findings in Section 7(f) of this rule and the Department's intent to pursue immediate lethal action based on those findings,¶

(B) Has previously documented and disclosed, on at least the agency's website, the information referenced in subsections (a)(A)-(C) of this section with respect to all but the most recent qualifying depredation that resulted in ~~ODFW~~the Department's determination to pursue lethal action, and¶

(C) Provides the remaining information referenced in subsections (a)(A)-(C) of this rule in a timely manner with respect to the most recent qualifying incident that ~~ODFW~~the Department pursues with immediate lethal action.¶

(10) Duration of chronic depredation lethal take authority. Take authority issued pursuant to subsection (7) expires:¶

(a) When the wolf or wolves identified for lethal removal have been removed by ~~ODFW~~Department or any other party.¶

(b) ~~ODFW~~Department may reinstate its take authority if ~~ODFW~~the Department confirms one additional qualifying incident of depredation within two months after the last confirmed qualifying depredation by what it believes to be a member or members of the same wolf pack and non-lethal efforts specified in Section 8 have continued to be implemented by the owner or lawful occupant of land where the additional depredation occurs;¶

(c) 45 days after issuance of the take authority and determination referenced in ~~s~~Section (7)Z(f), unless ~~ODFW~~the Department confirms, within that time period, another qualifying incident of depredation on livestock by what it believes to be the same wolf or wolves identified for lethal removal and non-lethal efforts specified in Section 8 have continued to be implemented by the owner or lawful occupant of land where the additional depredation occurs; or¶

(d) If ~~ODFW~~the Department determines the wolf or wolves identified for lethal removal have left the Area of Depredating Wolves. To support this determination, data must show more than just a short-term or seasonal movement outside the area's boundary.¶

(e) Except as allowed under subsections (b) and (c) of this ~~s~~Section, any subsequent authorization or reinstatement of take authority by the Department must comply with ~~s~~Sections (7)Z through (9)Z of this rule, and must be based upon at least one additional qualifying depredation.¶

(11) Lethal take in the case of extreme circumstances. Notwithstanding sections (7) and (8) of this rule, ~~ODFW~~Department may authorize the use of lethal force in extreme circumstances.¶

(a) Extreme circumstances means:¶

(A) Four or more confirmed incidents of depredation of livestock by what ~~ODFW~~the Department reasonably believes to be the same wolf or wolves within seven days;¶

(B) ~~ODFW~~The Department determines, based on evidence it makes publicly available, that there were no intentionally placed or known and reasonably accessible unnatural attractants such as bone or carcass piles or disposal sites that contributed to the incidents of depredation, and that non-lethal measures are and will likely remain ineffective; and¶

(C) ~~ODFW~~The Department finds that depredation has rapidly escalated beyond the reasonable, available means of ~~ODFW~~the Department and affected livestock owners to stop additional livestock losses from occurring.¶

(b) A decision to utilize lethal force authority due to extreme circumstances shall be made by the ~~ODFW~~Department director or director's designee, accompanied by the findings and determinations required in section (11)(a) made publically available on ~~ODFW~~the Department's website, and exercised within 14 days of the determination to exercise lethal force authority under this section, or of the last confirmed depredation, whichever comes later.

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

Statutes/Other Implemented: ORS 496.171 - 496.192, 497.298, 497.308, 498.002, 498.006, 498.012, 498.026

AMEND: 635-110-0020

RULE SUMMARY: Update the Oregon Wolf Conservation and Management Plan

CHANGES TO RULE:

635-110-0020

Harassment and Take of Wolves During Phase II (Management) ¶¶

NOTE: ~~As of January 105, 2014,~~ As of March 105, 2014, these ~~rule portions of these rules regarding harassment and take of wolves~~ are pre-empted in a portion of Oregon by the endangered status of the gray wolf under the federal Endangered Species Act. In the portion of Oregon where federal protections are reduced to a level below that of Oregon law, these rules govern harassment and take of wolves in Oregon. ¶¶

(1) This rule describes ~~the types of harassment and take of wolves allowed by persons outside ODFW (or ODFW or Wildlife Services acting as their agent) during Phase II – (Management: 5–7 breeding pairs) as called for in chapter III of the Oregon Wolf Conservation and Management Plan. Other chapters of the Plan authorize ODFW to take wolves for other specified wildlife management purposes~~ factors and regulations related to harassment and take of wolves during Phase II of the Oregon Wolf Conservation and Management Plan. ¶¶

(2) Non-injurious harassment of wolves is allowed under the same conditions as in Phase I (OAR 635-110-0010(2)). ¶¶

(3) Non-lethal injurious harassment. ¶¶

(a) Non-lethal injurious harassment conducted for the purpose of minimizing wolf-livestock conflict when livestock are present is allowed without a permit on private land by livestock producers (or their agents) on land they own or lawfully occupy. Livestock producers are encouraged to use non-injurious techniques first. There must be no identified circumstance that attracts wolf-livestock conflict, and the harassment must be reported to ~~ODFW~~ the Department within 48 hours. ¶¶

(b) Non-lethal injurious harassment conducted for the purpose of minimizing wolf-livestock conflict when livestock are present is allowed by permit on public land by grazing permittees (or their agents) who are legally using public land under valid livestock grazing allotments and upon the following conditions: ¶¶

(A) ~~ODFW~~ The Department confirms wolf depredation on livestock or other wolf-livestock conflict in the area. "Other wolf-livestock conflict" means loitering near, testing, chasing, or otherwise disrupting livestock; ¶¶

~~(B) ODFW~~ ¶¶

(B) The Department considers the location of known den sites; ¶¶

(C) There is no identified circumstance ~~at the site~~ which attracts wolf/livestock conflict; and ¶¶

(D) The harassment is reported to ~~ODFW~~ the Department within 48 hours. ¶¶

(c) As to non-lethal injurious harassment on either private or public land, pursuing wolves is allowed. ¶¶

(4) Relocation of wolves will be considered under the same circumstances as in Phase I (OAR 635-110-0010(4)). ¶¶

(5) Lethal take of wolves in the act of biting, wounding, killing or chasing livestock or working dogs. ¶¶

(a) A person, or an agent as described in paragraph (b), may lethally take a wolf on land the person owns or lawfully occupies only if: ¶¶

(A) The wolf is caught in the act of biting, wounding, killing or chasing livestock or working dogs; and ¶¶

(B) No person has used bait or taken other intentional actions to attract wolves. ¶¶

(b) A landowner or lawful occupant of land may authorize an agent to enter the land for the purpose of taking wolves pursuant to ~~(5)5(a)~~ (5)5(a) on the landowner or occupant's behalf. The authorization must be in writing, be carried by the agent when wolves are taken, and must include: ¶¶

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

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

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

(D) The expiration date of the authorization, which may not be later than one year from the issuance date. ¶¶

(c) Any person who takes a wolf pursuant to ~~(5)5(a)~~ (5)5(a) of these rules must make all reasonable efforts to preserve the scene, not remove or disturb the wolf carcass, and report the take to ~~ODFW~~ the Department within 24 hours. ¶¶

(6) Lethal take to deal with chronic depredation.¶

(a) ~~ODFW~~The Department may authorize its personnel, authorized agents, or Wildlife Services, to use lethal force on wolves at a property owner or permittee's request if:¶

(A) ~~ODFW confirms either:~~¶

(i) ~~Two confirmed depredations by wolves on livestock in the area; or~~¶

(ii) ~~One confirmed depredation followed by three attempted depredations (testing or stalking) in the area;~~¶

(B) ~~The requester documents unsuccessful attempts to solve the situation through non-lethal means; if:~~¶

(A) The Department confirms two confirmed depredations by wolves on livestock in the area within a consecutive nine-month period; and¶

(B) Efforts to prevent or solve the situation through non-lethal means which are appropriate for the situation are documented by livestock producer, grazing permittee, or representative; and¶

(C) No identified circumstance exists that attracts wolf-livestock conflict; and¶

(D) ~~The requester has~~Evidence does not exist of non-compliance with applicable laws and the conditions of, including any harassment or take permit conditions.¶

(b) Subject to the conditions specified in paragraph (c) and with a limited duration permit from ~~ODFW~~the Department, the following persons may use lethal force to deal with chronic depredation:¶

(A) Livestock producers (or their agents) on land they own or lawfully occupy; or¶

(B) Grazing permittees (or their agents) legally using public land.¶

(c) ~~ODFW~~The Department will issue a permit to use lethal force to deal with chronic depredation only if:¶

(A) ~~ODFW~~The Department confirms that the area has had at least two confirmed depredations by wolves on livestock;¶

(B) ~~ODFW determines that wolves are routinely present on that property and present in the area within a consecutive nine-month period;~~¶

(B) Department determines that wolves are a significant risk to livestock present in the area;¶

(C) There is no identified circumstance at the site which attracts wolf/livestock conflict;¶

(D) The applicant is in compliance with applicable laws and the terms of any previous wolf permit;¶

(E) The applicant documents use of non-lethal methods; and¶

(F) Any wolf taken is considered property of the state and reported to ODFW within 48 hours.¶

(7) "Identified circumstance" means a condition which:¶

(a) ~~ODFW determines, based upon its investigation of~~Efforts to prevent or solve the situation through non-lethal means which are appropriate for the situation; attracts wolves and fosters conflict between wolves and livestock; and¶

(b) ~~ODFW advises the landowner, re documented by livestock producer or, grazing permittee to remedy; but, or representative; and~~¶

(c) ~~The landowner, livestock producer or grazing permittee fails to remedy.~~¶

(8) "In the area" means where ~~ODFW has determined the presence of~~Any wolf taken under this rule is property of the state and reported to the d~~Depredating wolf~~eartment within 24 hours.

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

Statutes/Other Implemented: ORS 496.171 - 496.192, 497.298, 497.308, 498.002, 498.006, 498.012, 498.026

AMEND: 635-110-0030

RULE SUMMARY: Update the Oregon Wolf Conservation and Management Plan

CHANGES TO RULE:

635-110-0030

Harassment and Take of Wolves During Phase III ¶

NOTE: ~~As of January 105, 2014,~~ March 105, 2014, ~~these rule portions of these rules regarding harassment and take of wolves~~ are pre-empted in a portion of Oregon by the endangered status of the gray wolf under the federal Endangered Species Act. In the portion of Oregon where federal protections are reduced to a level below that of Oregon law, these rules govern harassment and take of wolves in Oregon. ¶

(1) This rule describes the types of harassment and take of wolves ~~allowed by persons outside ODFW (or ODFW or Wildlife Services acting as their agent) during Phase III (more than 7 packs) as called for in chapter III of the Oregon Wolf Conservation and Management Plan. Other chapters of the Plan authorize ODFW to take wolves for other specified wildlife management purposes during Phase III of the Oregon Wolf Conservation and Management Plan.~~ ¶

(2) Non-injurious harassment of wolves is allowed under the same conditions as in Phase I (OAR 635-110-0010(2)). ¶

(3) Non-lethal injurious harassment is allowed under the same conditions as in Phase II (OAR 635-110-0020(3)), except that wolf depredation on livestock or other wolf-livestock conflict may be confirmed by either ~~ODFW~~ the Department or Wildlife Services. ¶

(4) Relocation of wolves will be considered under the same circumstances as in Phase I (OAR 635-110-0010(4)). ¶

(5) Lethal take of wolves in the act of attacking livestock is allowed under the same conditions as for Phase II (OAR 635-110-0020(5)), except that wolf depredation on livestock may be confirmed by either ~~ODFW~~ the Department or Wildlife Services. ¶

(6) Lethal take of wolves to deal with chronic depredation is allowed under the same conditions as for Phase II (OAR 635-110-0020(6)), except ~~that~~ wolf depredation on livestock may be confirmed by either ~~ODFW~~ the Department or Wildlife Services. ¶

(7) The Commission ~~will~~ may authorize controlled take of wolves by special permit in specific areas ~~where necessary to address chronic wolf-livestock conflicts[s] or ungulate population declines. "Chronic" means two livestock depredations have been confirmed by ODFW or Wildlife Services, or one depredation followed by three attempted depredations (testing or stalking). The Commission may also choose to authorize such controlled take on private lands where the landowner is willing to provide access.~~

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

Statutes/Other Implemented: ORS 496.171 - 496.192, 497.298, 497.308, 498.002, 498.006, 498.012, 498.026

REPEAL: 635-110-0040

RULE SUMMARY: Update the Oregon Wolf Conservation and Management Plan

CHANGES TO RULE:

~~635-110-0040~~

~~Incidental Take of Wolves~~

~~Any person may apply for a permit to authorize take of a gray wolf (or wolves) incidental to an otherwise lawful activity, as per OAR 635-100-0170. However, ORS 496.172(4) prohibits the Commission from issuing an incidental take permit for a species that is federally listed.~~

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

~~Statutes/Other Implemented: ORS 496.171 - 496.192, 497.298, 497.308, 498.002, 498.006, 498.012, 498.026~~