



Oregon Fish and Wildlife Commission
October 12, 2007

EXHIBIT D

SUBJECT Bear or Cougar Agent Rules

PRINCIPAL STAFF PERSON Don Whittaker, Bear/Cougar Coordinator Phone: 503-947-6325

COMMISSION ACTION REQUESTED Consider proposed rules implementing HB 2971.

DOCUMENTS ATTACHED

1. Agenda Item Summary
2. Hearing Notice
3. Statement of Need and Economic Impact Statement
4. Staff Proposal
5. Oregon Administrative Rules
6. HB 2971
7. Public Correspondence

RELATED STATUTES ORS 496.138, 498.012, 498.164, and HB 2971 (Chapter 143, Oregon Laws 2007)

RELATED RULES

*Read and
Approved by:*

Division Administrator

Ron Anglin

Date

9/20/07

Attorney General

/s/ William R. Cook

Date

9/20/07

Director

Curtis E. Melton

Date

9/25/07

Agenda Item Summary

BACKGROUND

The 2007 Oregon Legislative Assembly enacted HB 2971 which authorizes the department to appoint agents for assisting the department in its official duties by pursuing black bear and/or cougar with dogs subject to the department's direction and control. These rules authorize two classes of agents 1) volunteer agents for responding to specific conflict or management actions consistent with the Oregon cougar and bear management plans and 2) private contractors hired by the department on personal services contracts to work on specific research projects.

Staff will provide proposed rules to implement statute put in place by HB 2971. The proposed rules detail the application and selection process as well as describes minimum information and training requirements for agents and contractors.

PUBLIC INVOLVEMENT

These proposed rules are being considered through a permanent rulemaking process, which includes public notice, public comment period, and a hearing before the Commission. Staff communicated with organized sports groups and other interested parties.

ISSUE 1

Whether to adopt the proposed rules

ANALYSIS

The proposed rules are consistent with the requirements of HB 2971 and will provide the department with flexibility to use the most cost effective methods for taking action deemed necessary to meet objectives under the bear and cougar management plans.

OPTIONS

1. Adopt the rules as proposed
2. Adopt the rules in some amended form
3. Not adopt any rules on this subject

STAFF RECOMMENDATION

Option 1.

DRAFT MOTION

I move to adopt OAR Chapter 635 Division 079 as proposed by staff.

Upon Filing.

EFFECTIVE DATE

Secretary of State
NOTICE OF PROPOSED RULEMAKING HEARING*
 A Statement of Need and Fiscal Impact accompanies this form.

Oregon Department of Fish and Wildlife (ODFW) – Wildlife Division	635
Agency and Division	Administrative Rules Chapter Number
Casaria Tuttle	(503)947-6033
Rules Coordinator	Telephone
3406 Cherry Ave. NE, Salem, OR 97303	
Address	

RULE CAPTION

Adopts rules for agents to, under Department's control, pursue bear and cougar with dogs
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

October 12, 2007	8:00 AM	3406 Cherry Ave N Salem, OR 97303	Oregon Fish and Wildlife Commission
Hearing Date	Time	Location	Hearings Officer

Hearing Date	Time	Location	Hearings Officer
<i>Auxiliary aids for persons with disabilities are available upon advance request.</i>			

RULEMAKING ACTION

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

ADOPT: OAR Chapter 635, Division 079

AMEND:

REPEAL:

RENUMBER:

AMEND & RENUMBER:

Stat. Auth. : ORS 496.012, 496.138, 498.164

Other Auth.:

Stats. Implemented: HB 2971 (Chapter 143, Oregon Laws 2007)

RULE SUMMARY

These rules will enable the department to appoint agents with special skills to assist the department in implementing wildlife management plans and activities including actions relating to bear and cougar.

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.

10/12/07

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

	Michelle Tate	8-15-07
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

Secretary of State

STATEMENT OF NEED AND FISCAL IMPACT

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

Oregon Department of Fish and Wildlife (ODFW) Wildlife Division	635
Agency and Division	Administrative Rules Chapter Number

In the Matter of: In the Matter of:	
Adoption of Rules:) Statutory Authority,
Relating to Appointment of Agents) Statutes Implemented,
to Act on Department's Behalf) Statement of Need,
) Principal Documents Relied Upon,
) Statement of Fiscal Impact

Adopts rules for agents to, under Department's control, pursue bear and cougar with dogs

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

Statutory Authority: ORS 496.012, 496.138, 498.164

Other Authority:

Stats. Implemented: HB 2971 (Chapter 143, Oregon Laws 2007)

Need for the Rule(s): These rules implement HB 2971(Chapter 143, 2007 Laws), enacted by the 2007 Legislative Assembly. The statute explicitly provides the Department the authority to appoint agents to pursue black bear or cougar in an official capacity and under the direction and control of the Department of Fish and Wildlife, and limits them to implementing the State's wildlife management plans. The statute directs the Department to adopt by rule a process and criteria for selecting agents and a scope of training.

Documents Relied Upon, and where they are available: Fish and Wildlife Commission's Cougar Management Plan (OAR 635.180); Fish and Wildlife Commission's Bear Management Plan (OAR 635.170)

The above documents are available for public inspection at the Department of Fish and Wildlife, Wildlife Division, Third Floor, 3406 Cherry Ave N, Salem, OR 97303, between 8:00 a.m. and 4:00 p.m., on normal working days, Monday through Friday.

Fiscal and Economic Impact, including Statement of Cost of Compliance: See Attached

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

Administrative Rule Advisory Committee consulted?: No

If not, why?:

These rules were developed from the direction of the 2007 Legislative assembly.

	Michelle Tate	8/15/07
Signature	Printed name	Date

Fiscal and Economic Impact Statement for the October 12, 2007 Hearing
in the Matter of Rules Relating to Designation of Agents for Removal
and Management of Bears and Cougars

Fiscal and economic impact: The Department is proposing rules to implement a statute allowing the appointment of volunteer agents to act in an official capacity on the Department's behalf, subject to the Department's direction and control. The Department would assign these agents to pursue bears and cougars in response to damage complaints and for other purposes specified in the management plans. The proposed rules will affect state agencies, units of local government and the public, respectively, as discussed below:

A. The only state agency which will be affected by adoption of these rules is the Oregon Department of Fish and Wildlife (ODFW). Currently, ODFW is responding to bear and cougar sightings and complaints as part of its routine management activities. There are no separate cost estimates for these activities. In 25 of the 36 Oregon Counties, Wildlife Services (A division of the U.S. Department of Agriculture) is available to respond to cougar and bear complaints and for the administrative removal of animals. Currently, ODFW pays Wildlife Services \$90,000 per biennium to respond to cougar and bear complaints.

The approximate cost by removal method is \$15,000/cougar for removal by traps and snares, compared to \$2,000/cougar for removal using dogs. Further cost savings would occur if volunteers are used to respond to damage complaints and to capture cougars and bears for research.

Consistent with the Cougar Management Plan (2006), three administrative removal areas (Target Areas) were created in 2006. Estimated cost of implementing administrative removal in the three Target Areas is about \$121,770 the first year and \$144,000 the second year (Table 1). Roughly 80% of the cost of implementation is associated with salaries. Costs will apply for recruitment, background checks, training, and equipment, but the opportunity to designate volunteers will eliminate salary costs. Information is not available on the costs of coordinating these volunteer efforts. Money saved by reducing ODFW costs could be used to contract with Wildlife Services for additional work.

Table 1. Estimated and actual cost (through 3/30/07) for administrative cougar removal in the three target areas.

	Heppner		Jackson County		East Beulah		Total	
	Estimated	Actual	Estimated	Actual	Estimated	Actual	Estimated	Actual
Fiscal 2007								
New Employees	\$12,000	\$11,760	\$32,770	\$0	\$8,000	\$7,200	\$52,770	\$18,960
Existing Employees	\$37,000	\$34,900	\$1,000	\$11,376	\$5,000	\$4,656	\$43,000	\$50,932
Supplies & Services	\$13,000	\$28,041	\$5,000	\$3,581	\$8,000	\$8,010	\$26,000	\$39,632
Total	\$62,000	\$74,701	\$38,770	\$14,957	\$21,000	\$19,866	\$121,770	\$109,524
Fiscal 2008								
New Employees	\$15,000		\$35,000		\$19,500		\$69,500	
Existing Employees	\$34,000		\$1,000		\$8,000		\$43,000	
Supplies & Services	\$10,000		\$5,000		\$16,500		\$31,500	
Total	\$59,000		\$41,000		\$44,000		\$144,000	

B. 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 expected as a result of the adoption of these rules.

C. The public is not likely to be fiscally affected by the adoption of these rules. The rule changes simply make the existing level of management including responding to damage complaints and public safety concerns less costly to implement.

The rules are believed to be fully compatible with legislative direction on the goals of fish and 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 the rule.

All businesses affected by these rules are believed to be "small business" and the effect is not significant.

Selection and Use of Agents for Using Dogs to Pursue Black Bear or Cougar

October 12, 2007

Background

In 1994, Oregonians passed Ballot Measure 18 which generally outlawed the use of dogs to hunt or pursue bear or cougars for sport hunting of cougar. Measure 18 provided exceptions for the use of dogs by the department and its agents when acting in official capacities, but the statute did not clearly grant the department authority to designate agents. To clarify this issue, the 2007 Oregon Legislative Assembly enacted HB 2971, which authorizes the department to appoint agents for assistance in our official duties pursuing black bear and/or cougar with dogs subject to the department's direction and control.

Staff will provide draft rules designed to implement HB 2971. The proposed rules detail the application and selection process, describe minimum qualifications and training requirements for agents and contractors, and delineate rules regarding their behavior. The proposed rules apply to two classes of agents: 1) volunteer agents for responding to specific conflict or management actions consistent with the Oregon cougar and bear management plans and 2) private contractors hired by the department on personal services contracts to work on specific projects.

Bear/Cougar Agent Rules

To implement this statute, the department has developed new rules governing the selection and appointment of agents and contractors for assisting with black bear and cougar management when using trained dogs as the most effective tool. The proposed rules detail the application and selection process for agents or contractors that will represent the department in its official capacity. The rules also describe the information and training requirements for agents and contractors.

The application and selection processes specifically detail the application requirements the department needs to evaluate and select applicants. This information includes such items as experience handling dogs, individual background checks, and driving records. Once selected, appointment of agents or contractors will occur via a volunteer agreement or contract, respectively.

Before pursuing black bear or cougar on the department's behalf, each appointed agent or selected contractor will be required to complete an information and training session conducted by the department. The session will provide information on:

- 1.) Requirements for use of pursuit dogs and related equipment;
- 2.) A code of conduct for volunteers working on the department's behalf;

3.) Identification of specific areas and boundaries where activities will be conducted for the department.

Usage

These rules do not allow sport hunting of cougar or bear using dogs. What these rules establish is a process by which the department can utilize individuals with specialized skills to address specific management or research needs. Agents or contractors would be used to: address specific cougar and bear conflict situations; capture cougar and bear for specific research or management projects; and would allow the department to use agents or contractors to conduct management activities such as those prescribed in species plans (e.g. OAR Division 120, Bighorn Sheep Plan; and OAR Division 180, Cougar Management Plan).

Because many situations requiring the need for using dogs to address conflict with cougars cannot be predicted, individuals selected as volunteer agents or contractors may seldom be called for work. Individuals or contractors also may be called to assist the department on short notice as situations develop. Any cougar taken using volunteer agents or contractors will be disposed of as directed by existing rule (Division 635–002).

Division 079

APPOINTING BLACK BEAR and/or COUGAR AGENTS

635-079-0000

Purpose

These rules implement HB 2971, enacted by the 2007 Legislative Assembly, which authorized appointment of agents to assist the department in its official duties by pursuing black bear and/or cougar with dogs subject to the department's direction and control.

These rules authorize two classes of agents 1) volunteer agents for responding to specific conflict or management actions consistent with the Oregon cougar and bear management plans and 2) private contractors hired by the department on personal services contracts to work on specific projects.

635-079-0005

Selection

(1) Any person applying for appointment as a black bear and/or cougar agent for the department must submit a completed application form providing at least the following:

(a) the person's name, contact information and employment history;

(b) a detailed description of the person's experience in pursuing or hunting wildlife with dogs;

(c) a detailed description of the person's experience with firearms, first aid and the use of all-terrain vehicles, four wheel drive pickups, and snowmobiles;

(d) consent to run a criminal records check on the person, including a fingerprint check;

(e) a detailed description of the person's tracking dogs including their training history, and locations, timing, and species of wildlife the dogs have pursued;

(f) a current certified copy of their motor vehicle records; and

(g) a detailed description of available equipment that can be used while pursuing or hunting cougar or bear with dogs.

(2) The department shall review the person's application materials, run state and national criminal records checks on the person, hold an in-person interview, and determine whether the person meets the following criteria:

(a) has not been convicted of any crime concerning animal cruelty, animal abuse, or domestic abuse;

(b) has not been convicted of any crime concerning the fish and wildlife laws that the department's Wildlife Division determines would render applicant unreliable;

(c) would be available to respond to assignment by the department;

(d) is skilled in the safe use of firearms, all-terrain vehicles, four wheel drive pickups, and snowmobiles;

(e) has a basic understanding of first aid;

(f) has not been convicted of any violation involving illegal drugs or alcohol abuse;

(g) understands and respects basic principles of wildlife management, and

(h) currently holds an Oregon drivers license.

(3) The department will consider the experience level of the person for each of the criteria listed in paragraph (2) and will use that information to select individuals suitable for appointment as an agent.

635-079-0010

Appointment

(1) To appoint a person as an agent under these rules, the department and the person must enter into a signed agreement which, at minimum:

(a) Obligates the person to act on the department's behalf and subject to the department's direction and control;

- (b) Limits the person, when acting on the department's behalf, to implementing the department's specific management programs, consistent with the Commission's black bear management plan or Commission's cougar management plan;
- (c) Prohibits the person from engaging in any other hunting or pursuit while pursuing black bear or cougar on the department's behalf;
- (d) Obligates the person to promptly inform his/her department supervisor of any arrest or violation of the animal cruelty, animal abuse, or domestic abuse laws; any arrest or violation involving illegal drugs or alcohol abuse; and any arrest or violation of the wildlife laws;
- (e) Automatically terminates the appointment if the person is convicted of any violation of the animal cruelty, animal abuse, or domestic abuse laws; is convicted of any violation involving illegal drugs or alcohol abuse; if the Wildlife Division determines the person has purposely violated the wildlife laws; or if the person can no longer legally operate motor vehicles in Oregon;
- (f) Automatically terminates the appointment if the department determines that the person is not trustworthy, fails to carefully obey all directions from the department, or conducts themselves in a manner that reflects poorly on the department;
- (g) Authorizes the person to pursue black bear and/or cougar with dogs at the direction of the department and in an official capacity; and
- (h) Obligates the person to follow all applicable safety and health rules while operating on the department's behalf.
- (2) An agreement with a volunteer agent shall not authorize payment of any compensation or wages to the agent except for the following:
- (a) the department may compensate the agent for vehicle fuel cost incurred while acting for the department;

(b) the department may compensate the agent for dog related expenses incurred while acting for the department.

(3) An agreement with a person as a private contractor to assist the department with black bear and/or cougar pursuit using dogs shall provide compensation as per state contracting requirements.

(4) Before pursuing black bear or cougar on the department's behalf, each appointed agent shall complete an information and training session conducted by the department. The session shall cover, at a minimum:

(a) Requirements for use of pursuit dogs, firearms, all-terrain vehicles and snowmobiles;

(b) A code of conduct for volunteers working on the department's behalf;

(c) Identification of specific areas and boundaries where activities will be conducted; and

(d) Identification of the specific timing for activities to be conducted for the department.

(5) All activities of agents and contractors will be directed and coordinated by the department.

(6) Agents will be required to keep a record of daily activities which will be submitted to the department on a weekly basis.

(7) All agreements and contracts with volunteer agents and contractors will be available for public review at the department's Salem headquarters office.

(8) The department may terminate appointment of any individual as an authorized agent at any time if it determines that the appointment no longer is in the best interest of the state of Oregon. Appointment as an agent conveys no rights or privileges other than those specifically outlined in the agreement, which terminates immediately upon termination of the agent.

74th OREGON LEGISLATIVE ASSEMBLY--2007 Regular Session

Enrolled House Bill 2971

Sponsored by COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES

CHAPTER

AN ACT

Relating to methods of taking wildlife; creating new provisions; and amending ORS 498.164.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 498.164 is amended to read:

498.164. (1) Except as provided in subsections (2) [*and (3)*] **to (4)** of this section, a person may not use bait to attract or take black bears or use one or more dogs to hunt or pursue black bears or cougars.

(2) Nothing in subsection (1) of this section prohibits the use of bait or one or more dogs by employees or agents of county, state[,] or federal agencies while acting in their official capacities.

(3)(a) As allowed by subsection (2) of this section, the State Department of Fish and Wildlife is authorized to appoint persons to act as agents for the department for the purpose of using one or more dogs to hunt or pursue black bears or cougars. Such hunt or pursuit must be in compliance with any black bear management plan and any cougar management plan adopted by rule by the State Fish and Wildlife Commission. An agent acts on the department's behalf and, subject to the department's direction and control, implements specific management programs of the department. An agent may not engage in any other hunting or pursuit while acting on the department's behalf.

(b) The department shall:

(A) Make the appointment in written form; and

(B) Ensure that the written appointment is available to the public for review at the main office of the department in Salem.

(c) Upon appointment of an agent by the department, the department shall fix the compensation of the agent and prescribe the duties of the agent. The authority of the agent to act shall be limited to the terms set forth in the written appointment under paragraph (b) of this subsection.

(d) The commission shall adopt by rule a process and criteria for selecting and training persons to act as agents pursuant to subsection (3)(a) of this section. The process and criteria shall include, but are not limited to, the qualifications and training for agents and are to cover any guidelines, policies or codes of conduct of the department regarding firearms, first aid, all-terrain vehicles and snowmobiles and the use of alcohol or drugs. The department may also require fingerprints as specified in ORS 496.121 for the purpose of requesting state or nationwide criminal records checks.

[3] (4) Nothing in subsection (1) of this section prohibits the use of bait or dogs by persons for the taking of black bears or cougars in accordance with the provisions of ORS 498.012 relating to taking wildlife that is causing damage.

[(4)] (5) Any person who violates subsection (1) of this section commits a Class A misdemeanor and, upon conviction, shall in addition to appropriate criminal penalties have his or her privilege to apply for any hunting license suspended for a period of five years for a first offense and permanently suspended for any subsequent offense.

[(5)] (6) For the purposes of this section, "bait" means any material placed for the purpose of attracting or attempting to attract bears.

SECTION 2. ORS 498.164, as amended by section 1 of this 2007 Act, is amended to read:

498.164. (1) Except as provided in subsections (2) [to (4)] to (3) of this section, a person may not use bait to attract or take black bears or use one or more dogs to hunt or pursue black bears or cougars.

(2) Nothing in subsection (1) of this section prohibits the use of bait or one or more dogs by employees or agents of county, state or federal agencies while acting in their official capacities.

[(3)(a) As allowed by subsection (2) of this section, the State Department of Fish and Wildlife is authorized to appoint persons to act as agents for the department for the purpose of using one or more dogs to hunt or pursue black bears or cougars. Such hunt or pursuit must be in compliance with any black bear management plan and any cougar management plan adopted by rule by the State Fish and Wildlife Commission. An agent acts on the department's behalf and, subject to the department's direction and control, implements specific management programs of the department. An agent may not engage in any other hunting or pursuit while acting on the department's behalf.]

[(b) The department shall:]

[(A) Make the appointment in written form; and]

[(B) Ensure that the written appointment is available to the public for review at the main office of the department in Salem.]

[(c) Upon appointment of an agent by the department, the department shall fix the compensation of the agent and prescribe the duties of the agent. The authority of the agent to act shall be limited to the terms set forth in the written appointment under paragraph (b) of this subsection.]

[(d) The commission shall adopt by rule a process and criteria for selecting and training persons to act as agents pursuant to subsection (3)(a) of this section. The process and criteria shall include, but are not limited to, the qualifications and training for agents and are to cover any guidelines, policies or codes of conduct of the department regarding firearms, first aid, all-terrain vehicles and snowmobiles and the use of alcohol or drugs. The department may also require fingerprints as specified in ORS 496.121 for the purpose of requesting state or nationwide criminal records checks.]

[(4)] (3) Nothing in subsection (1) of this section prohibits the use of bait or dogs by persons for the taking of black bears or cougars in accordance with the provisions of ORS 498.012 relating to taking wildlife that is causing damage.

[(5)] (4) Any person who violates subsection (1) of this section commits a Class A misdemeanor and, upon conviction, shall in addition to appropriate criminal penalties have his or her privilege to apply for any hunting license suspended for a period of five years for a first offense and permanently suspended for any subsequent offense.

[(6)] (5) For the purposes of this section, "bait" means any material placed for the purpose of attracting or attempting to attract bears.

SECTION 3. The amendments to ORS 498.164 by section 2 of this 2007 Act become operative January 2, 2014.

Passed by House May 8, 2007

Repassed by House June 11, 2007

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Chief Clerk of House

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Speaker of House

Passed by Senate June 8, 2007

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President of Senate

Received by Governor:

.....M.,....., 2007

Approved:

.....M.,....., 2007

.....
Governor

Filed in Office of Secretary of State:

.....M.,....., 2007

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Secretary of State

Public Correspondence*

As of Sept 25, 2007, no public comments have been received.