

Proposed Amendments to the Washington Administrative Code to Codify Key Portions of the Washington Wolf Conservation and Management Plan

The following amendments should be made to the Washington Administrative Code, Title 232, Chapters 12 and 36. All additions appear as underlined text; all text to be removed is bracketed. Most language of proposed amendments is identical to or clarifies the existing text of the Washington Wolf Conservation and Management Plan, adopted by the Commission as current state wolf policy. The principal exception involves additional specific information defining when lethal control may be used, information which WDFW has indicated it believes is necessary.

The following section should be added.

WAC 232-12-230

Information and identification materials about wolves.

Information and education efforts are needed to inform landowners, hunters and trappers about the presence of wolves in occupied areas of the state.

(1) WDFW shall use hunting, fishing, and trapping regulation pamphlets and other means to provide effective educational messages and identification materials about wolves, including how to avoid accidental shooting during legal hunting seasons.

(2) WDFW shall provide to landowners whose land includes one or more den sites information on the locations of den sites, the timing and duration of denning, and how to avoid disturbance of den sites.

The following changes should be made.

WAC 232-36-030

Definitions

Definitions used in rules of the Fish and Wildlife Commission are defined in RCW 77.08.010, and the definitions for wildlife interactions are defined in RCW 77.36.010. In addition, unless otherwise provided, the following definitions are applicable to this chapter:

"Act of damaging" means that private property is in the process of being damaged by wildlife, and the wildlife are on the private property, which contains commercial crops, pasture, or livestock.

"Big game" means those animals listed in RCW 77.08.030.

"Claim" means an application to the department for compensation under this chapter.

"Claimant" means owner of commercial crop or livestock who has filed a wildlife damage claim for cash compensation.

"Commercial crop" means a commercially raised horticultural and/or agricultural product and includes the growing or harvested product, but does not include livestock, forest land, or rangeland. For the purposes of this chapter, Christmas trees and managed pasture grown using agricultural methods including one or more of the following: Seeding, planting, fertilizing, irrigating, and all parts of horticultural trees, are considered a commercial crop and are eligible for cash compensation.

"Commercial livestock" means cattle, sheep, and horses held or raised by a person for sale.

"Compensation" means a cash payment, materials, or service.

"Completed written claim" means that all of the information required on a department crop or livestock damage claim form is supplied and complete, including all supplemental information and certifications required to process the claim.

"Damage" means economic losses caused by wildlife interactions.

"Damage claim assessment" means department approved methods to evaluate crop loss and value caused by deer or elk damage to commercial crops, or livestock losses and value caused by bear, cougar, or wolves.

"Eligible farmer" means an owner who satisfies the definition of eligible farmer pursuant to RCW 82.08.855 (4)(b)(i) through (iv).

"Emergent" means an unforeseen circumstance beyond the control of the landowner or tenant, that presents a real and immediate threat to crops, domestic animals, or fowl.

"Game animal" means wild animals that shall not be hunted except as authorized by the commission.

"Guard dog" means dogs trained for the purpose of protecting livestock from attack by wildlife or for herding livestock.

"Immediate family member" means spouse, state registered domestic partner, brother, sister, grandparent, parent, child, or grandchild.

"Immediate threat of physical harm" means that animal-to-human bodily contact is imminent; and the animal is in attack posture/mode.

"In the act of attacking" means actively biting, wounding, or killing.

"Livestock" means horses, cattle, sheep, goats, swine, donkeys, mules, llamas, and alpacas.

"Owner" means a person who has a legal right to commercial crops, commercial livestock, or other private property that was damaged during a wildlife interaction.

"Physical act of attacking" means actual or imminent animal-to-human physical contact.

"Public hunting" means an owner satisfies the "public hunting" requirement for his or her land, as defined in WAC 232-36-300.

"Wild animal" means those species of the class Mammalia whose members exist in Washington in a wild state.

"Wildlife control operator" means a person who has successfully completed the training and obtained one or more levels of certification from the department to assist landowners to prevent or control problems caused by wildlife.

"Wildlife interaction" means the negative interaction and the resultant damage between wildlife and commercial crops, commercial livestock, or other property.

WAC 232-36-051

Harassing and [K]killing wildlife causing private property damage.

The fish and wildlife commission is authorized to classify wildlife as game, and/or as endangered or protected species, and/or as a predatory bird consistent with RCW 77.08.010 and 77.12.020. The commission is also authorized, pursuant to RCW 77.36.030, to establish the limitations and conditions on killing or trapping wildlife that is causing property damage.

The conditions for killing wildlife vary, based primarily on the classification of the wildlife species, the imminent nature of the threat to damage private property, the type of private property damage, and the preventive and nonlethal methods employed by the person prior to the damage event. Additional conditions defined by the department may also be important, depending on individual situations. Killing wildlife to address private property damage is subject to all other state and federal laws including, but not limited to, Titles 77 RCW and 232 WAC.

Wolves causing damage to commercial livestock may be killed only pursuant to paragraph 3 of this section.

(1) Killing wildlife causing damage to a commercial crop or commercial livestock.

(a) It is permissible to kill unclassified wildlife, predatory birds, and big game animals that are in the act of damaging commercial crops or livestock, under the following conditions:

(i) Predatory birds (defined in RCW 77.08.010(39)) and unclassified wildlife that are in the act of damaging commercial crops or livestock may be killed with the express permission of the owner at any time on private property, to protect commercial crops or livestock.

(ii) An owner with a valid, written damage prevention agreement with the department may kill an individual (one) big game animal while it is in the act of damaging commercial crops.

(iii) An individual (one) big game animal may be killed during the physical act of attacking livestock.

(iv) Multiple big game animals may be killed while they are in the act of damaging commercial crops or livestock if the owner is issued a kill permit by the department.

(v) A damage prevention agreement or kill permit must include: An approved checklist of the reasonable preventative and nonlethal means that must be employed prior to lethal removal; a description of the properties where lethal removal is allowed; the species and sex of the animal that may be killed; the terms of the agreement/permit; the dates when lethal removal is authorized; who may kill the animal(s); and other conditions developed within department procedural documents.

(b) It is unlawful to kill protected species (as defined in WAC 232-12-011) or endangered species (as defined in WAC 232-12-014) unless authorized by commission rule or with a permit from the department, with the following additional requirements:

(i) Federally listed threatened or endangered species will require federal permits or federal authority, in addition to a state permit.

(ii) All migratory birds are federally protected and may require a federal permit or federal authority, in addition to a state permit.

(2) Killing wildlife causing damage or killing wildlife to prevent private property damage.

(a) An individual (one) big game animal may be killed during the physical act of attacking livestock or pets.

(b) Predatory birds (as defined in RCW 77.08.010(39)), unclassified wildlife, and eastern gray squirrels may be killed with the express permission of the property owner at any time, to prevent private property damage on private real property.

(c) Subject to subsection (6) of this section, the following list of wildlife species may be killed with the express permission of the owner, when causing damage to private property: Raccoon, fox, bobcat, beaver, muskrat, mink, river otter, weasel, hare, and cottontail rabbits.

(d) The department may make agreements with landowners to prevent private property damage by wildlife. The agreements may include special hunting season permits such as: Landowner damage prevention permits, spring black bear hunting permits, permits issued through the landowner hunting permit program, kill permits, and Master Hunter permits.

(e) Landowners are encouraged to allow general season hunters during established hunting seasons on their property to help minimize damage potential and concerns.

(3) Killing wolves causing damage to commercial livestock to prevent damage to private property.

(a) With regard to wolves, the best solution for limiting livestock losses is the implementation of proactive deterrents such as fladry, hazing, radio-activated guard devices, electric fences, guarding and herding animals, and other measures to protect against wolf-livestock conflicts. In some instances, lethal control can preclude the recovery of wolf populations.

(b) WDFW shall endeavor to provide commercial livestock operators with training and assistance in the use of proactive, non-lethal management tools as determined by science and best management practices to avoid wolf-livestock conflicts. WDFW shall provide commercial livestock operators with information on wolf locations for the purposes of minimizing wolf-livestock conflicts.

(c) Consistent with federal law, a commercial livestock operator may utilize non-injurious harassment techniques to avoid wolf-livestock conflicts. Consistent with federal law, WDFW may issue a commercial livestock operator a permit to utilize non-lethal injurious harassment techniques to avoid wolf-livestock conflicts. If, during the time wolves are listed as a state endangered species, such techniques are used inappropriately, or if a wolf dies as a result of the use of non-lethal injurious harassment, WDFW may cancel such permits.

(d) Consistent with federal law, WDFW may use lethal control on a wolf on a case-by-case basis in response to chronic depredation if it is documented by WDFW that livestock have clearly been killed by wolves, but only if WDFW finds that non-lethal methods have been tried but failed to resolve the conflict, depredations are likely to continue, and there is no evidence of intentional feeding or the unnatural attraction of wolves.

(i) Chronic depredation for the purposes of this subsection is defined as six incidents of confirmed wolf depredations within four months by the same wolf or wolves.

(ii) The confirmed killing by wolves of more than one animal on a single occasion results in a single incident of depredation.

(e)(i) During the period that wolves are listed as a sensitive species, and consistent with federal law, WDFW may issue a permit to a landowner, or to a landowner's family members or authorized employees, to use lethal control on a wolf, on the landowner's land or public grazing allotment the landowner currently leases, on a case-by-case basis to reduce repeated depredations

if it is documented that livestock have been confirmed to have been killed by wolves, but only if WDFW finds that nonlethal methods have been tried but failed to resolve the conflict, depredations are likely to continue, and there is no evidence of intentional feeding or unnatural attraction of wolves.

(ii) Such a permit shall include: an approved checklist of the reasonable, preventative, and nonlethal means that must be employed prior to lethal removal and during the duration of the permit; a description of the properties where lethal removal is allowed; the sex of the animal that may be killed; the terms of the permit; the dates when lethal removal is authorized; who may kill the wolf described; and other conditions developed within department procedural documents.

(iii) Wolves killed under this provision must be reported to WDFW within 24 hours, with additional reasonable time allowed if there is limited access to the take site. The wolf carcass must be surrendered to WDFW, and preservation of physical evidence from the scene of the attack for inspection by WDFW is required.

(f) For the purposes of paragraphs (d) and (e) above, in order for WDFW to find that non-lethal methods have been tried but failed, the relevant landowner/producer where the depredations have occurred must have implemented the non-lethal measures recommended by the agency to reduce the conflict for at least seven days prior to a confirmed depredation.

(g) Whenever possible, lethal control shall be limited to solitary individuals or territorial pairs. Whenever possible, lethal control of a wolf from a reproductive pack shall not occur until pups are more than six months old, the packs contain six or more members (including three or more adults or yearlings), neighboring packs exist nearby, and the state population totals 75 or more wolves. Whenever possible, lethal control shall not occur around or between any core recovery areas that are identified, especially during the denning and pup rearing periods, from April to September.

(h) Wolves may not be intentionally baited, fed, or deliberately attracted for any purpose. WDFW shall investigate and recommend for prosecution all illegal killings of wolves

(4[3]) Wildlife control operators may assist property owners under the conditions of their permit, as established in WAC 232-36-060 and 232-36-065.

(5[4]) Tribal members may assist property owners under the conditions of valid co-management agreements between tribes and the department. Tribes must be in compliance with the agreements including, but not limited to, adhering to reporting requirements and harvest restrictions.

(6[5]) Hunting licenses and tags are not required to kill wildlife under this section, unless the killing is pursuant to subsections (2)(c) and (d) of this section. Tribal members operating under subsection (4) of this section are required to meet tribal hunting license, tag, and permit requirements.

(7[6]) Except as specifically provided in a permit from the department or a rule of the commission, people taking wildlife under this rule are subject to the laws and rules of the state including, but not limited to, those found in Titles 77 RCW and 220 and 232 WAC.

WAC 232-36-052

Killing wolves attacking livestock. The commission is authorized, pursuant to RCW 77.36.030, to establish the limitations and conditions on killing or trapping wildlife that is causing damage on private property. The department may authorize, pursuant to RCW 77.12.240 the killing of wildlife destroying or injuring property. Killing wildlife to address private property

damage is subject to all other state and federal laws including, but not limited to, Titles 77 RCW and 232 WAC.

(1) An owner of [domestic animals] commercial livestock, the owner's immediate family member, the agent of an owner, or the owner's documented employee may kill one gray wolf (*Canis lupus*) [without a permit issued by the director,] regardless of its state classification, if

(a) the wolf is attacking their [domestic animals] commercial livestock;

(b) there has been a prior confirmed depredation in the area and non-lethal efforts to resolve the problem have been deemed ineffective;

(c) there is no evidence that the wolves have been baited or unnaturally attracted to the area;

(d) the owner of commercial livestock has undergone prior training on use of caught-in-the-act authority; and

(e) the owner of commercial livestock has received from WDFW a permit to exercise caught-in-the-act authority.

([a]f) This section applies to the area of the state where the gray wolf is not listed as endangered or threatened under the federal endangered species act.

([b]g) Any wolf killed under this authority must be reported to the department within twenty-four hours and all physical evidence related to the event must be preserved for investigative purposes.

([c]h) The wolf carcass must be surrendered to the department.

(d) The owner of the [domestic animal] commercial livestock must grant or assist the department in gaining access to the property where the wolf was killed for the purposes of data collection or incident investigation.

(2) If the department finds that a private citizen killed a gray wolf that was not attacking a domestic animal, or that the killing was not consistent with this rule, then that person may be prosecuted for unlawful taking of endangered wildlife under RCW 77.15.120.

(3) In addition to the provisions of subsection (1) of this section, the director may authorize additional removals by permit under the authority of RCW 77.12.240.

(4) If this provision is used inappropriately, or if two wolf kills occur under this provision within one year, WDFW will investigate and decide whether to stop issuing new permits and/or withdraw existing permits.

Two new sections should be added.

WAC 232-36-053

WDFW Investigations of complaints of wolf depredation on commercial livestock.

Upon complaint by a commercial livestock operator of a possible attack by a wolf on that operator's livestock, WDFW shall conduct an investigation within 48 hours after receiving the complaint, led by personnel trained in depredation investigation techniques. After an investigation is completed, the complaint will be classified by WDFW under one of the following categories:

(1) Confirmed Wolf Depredation – There is reasonable physical evidence that the dead or injured animal was actually attacked or killed by a wolf. Primary confirmation would ordinarily

be the presence of bite marks and associated subcutaneous hemorrhaging and tissue damage, indicating that the attack occurred while the victim was alive, as opposed to simply feeding on an already dead animal. Spacing between canine tooth punctures, feeding pattern on the carcass, fresh tracks, scat, hairs rubbed off on fences or brush, or eyewitness accounts of the attack may help identify the specific species or individual animal responsible for the depredation. Predation might also be confirmed in the absence of bite marks and associated hemorrhaging (i.e., if much of the carcass has already been consumed by the predator or scavengers) if there is other physical evidence to confirm predation on the live animal. This might include evidence of an attack or struggle. There may also be nearby remains of other victims for which there is still sufficient evidence to confirm predation, allowing reasonable inference of confirmed predation on an animal that has been largely consumed.

(2) Probable Wolf Depredation – There is sufficient evidence to suggest that the cause of death was depredation, but not enough to clearly confirm that the depredation was caused by a wolf. A number of other factors will help in reaching a conclusion, such as (1) any recently confirmed predation by wolves in the same or nearby area, and (2) any evidence (e.g., telemetry monitoring data, sightings, howling, fresh tracks, etc.) to suggest that wolves may have been in the area when the depredation occurred. All of these factors and possibly others would be considered in the investigator's best professional judgment.

(3) Confirmed Non-Wild Wolf Depredation – There is clear evidence that the depredation was caused by another species (coyote, black bear, cougar, bobcat, domestic dog), a wolf hybrid, or a pet wolf.

(4) Unconfirmed Depredation – Any depredation where the predator responsible cannot be determined.

(5) Non-Depredation – There is clear evidence that the animal died from or was injured by something other than a predator (e.g. disease, inclement weather, or poisonous plants). This determination may be made even in instances where the carcass was subsequently scavenged by wolves.

(6) Unconfirmed Cause of Death – There is no clear evidence as to what caused the death of the animal.

WAC 232-36-070

Translocation of wolves in lieu of lethal control and otherwise.

(1) Wolves may be translocated for the following reasons only:

(a) If genetic research determines that an isolated wolf population has reduced genetic diversity, wolves from another population or pack may be moved into the population to increase genetic diversity in an effort to increase population viability. This activity would be conducted solely to facilitate genetic exchange with other populations in the state.

(b) When one recovery region has exceeded its delisting requirements, as defined by the Washington Wolf Conservation and Management Plan, by at least one successful breeding pair, while another recovery region remains completely unoccupied by wolves, an evaluation of translocation efforts could begin. Wolves may only be translocated out of a recovery region if that region exceeds delisting objectives at the time of removal and removal would not cause the region's population to fall below its delisting objectives.

(c) Translocation can be used in lieu of lethal control to address commercial livestock losses on a case-by-case basis, but only if WDFW finds that efforts to utilize non-lethal means to resolve the problem have been ineffective.

(2) (a) Before translocation, a feasibility assessment shall be performed to determine if sufficient suitable habitat and prey are available to support wolves at potential translocation sites in the recipient region, and to ensure that removal of wolves from the source region would not cause it to fall below delisting objectives. If all of these conditions were met, an implementation plan shall be prepared, which would provide detailed information on translocation methods and the selection of one or more release sites.

(b) If a wolf is to be translocated per sections (1)(a) or (1)(b) above, the following requirements must also be met. A final proposed decision on translocation would include consideration of genetics in selecting the source population. Before a final decision on translocation is made, a public review process shall be conducted to evaluate the translocation proposal. If the proposed translocation site is on federal land, the review process shall be conducted under the National Environmental Policy Act (NEPA); if the proposed translocation site is on non-federal land, the State Environmental Policy Act (SEPA) process shall be used. A review process under NEPA for a proposed translocation on federal land may be conducted in advance of a specific need in order to proactively identify areas suitable for translocation. WDFW biologists shall coordinate with other land management agencies to determine a suitable location to release wolves.