

**FINAL REGULATIONS - CHAPTER 10 - NONGAME WILDLIFE**

**ARTICLE I - GENERAL PROVISIONS**

**#1000 - PROTECTED SPECIES**

A. Nongame species and subspecies, including threatened or endangered wildlife are protected and their harassment, taking or possession is prohibited except as follows:

1. Under a scientific collecting license.
2. Under a rehabilitation license.
3. Under a license for zoological, educational, propagation or other special purposes.
4. Allowed species of raptors under a falconry license.
5. Bats, mice except Preble's meadow jumping mouse (*Zapus hudsonius preblei*), voles, rats, porcupines, and ground squirrels may be captured or killed when creating a nuisance or causing property damage.
6. Except as provided in #015.A. of these regulations, up to four individuals of each of the following species and/or subspecies of reptiles and amphibians may be taken annually and held in captivity, provided that no more than twelve in the aggregate may be possessed at any time:

Plains spadefoot

Woodhouse's toad

Boreal chorus frog

Painted turtle Ornate box turtle

Common sagebrush lizard

Ornate tree lizard

Common side-blotched lizard

Prairie lizard

Plateau fence lizard

Gophersnake

Terrestrial gartersnake

Plains gartersnake

Common lesser earless lizard

Tiger whiptail

North American racer

Plains hog-nosed snake

- a. Such reptiles and amphibians and their progeny may only be disposed of by gift or as authorized by the Division of Wildlife. Further, such reptiles and amphibians may be released back into the wild provided they have not come into contact with reptiles and amphibians from other geographic areas and they are released as close as possible to, but in no event further than ten miles from, their place of origin.
  - b. Any other species of native reptiles or amphibians taken from the wild and lawfully possessed prior to July 1, 1998, may continue to be held in captivity provided that written notification of the numbers and species being held is given to the Division prior to July 1, 1998. Such notification shall be sent to the special licensing unit at 6060 Broadway, Denver, CO 80216.
7. Threatened or endangered wildlife may be possessed if legally taken in and transported from another state or country and legally imported into the United States and Colorado.
8. Any peregrine falcon legally held in captivity which is:
- a. Possessed and banded in compliance with the terms of a valid permit issued by the U.S. Fish and Wildlife Service; or
  - b. Identified in the earliest applicable annual report required to be filed by a permittee under Title 50, Code of Federal Regulations, as in a permittee's possession on November 10, 1978, or as the progeny of such raptor.
  - c. Provided, however, if a peregrine falcon otherwise excepted under this paragraph 8 is intentionally returned to the wild, it shall thereafter be deemed to be wild and subject to protection as a threatened or endangered species, as if it had never been reduced to lawful possession.
9. Greenback cutthroat trout may be taken under catch and release regulations in certain drainages within Rocky Mountain National Park, in the Cache la Poudre drainage, or in accordance with restrictions for individual waters found in #108 A.
10. Livestock owners and their agents are authorized to use hazing techniques when necessary to prevent or reduce injury or damages to livestock and guard animals caused by gray wolves (*Canis lupus*).
- a. "Hazing techniques" means the use of:
    - (i) Livestock guard animals,
    - (ii) Fladry or electrified fladry,
    - (iii) Cracker shells, rubber buckshot, rubber slugs, and bean bag rounds,
    - (iv) Scare devices or tactics including propane cannons, vehicles, ATVs, range riders, noisemakers, fox lights and motion- and radio-activated guard devices.
  - b. Hazing that results in the injury or death of a wolf is not permitted. Any person who injures or kills a wolf must report the same to the Division within 48 hours.
  - c. Hazing must be consistent with federal law. If gray wolves are on the list of federally endangered or threatened species, hazing is prohibited unless authorized by the United States Fish and Wildlife Service.

d. For purposes of this rule, "livestock" is defined in § 35-1-102(6), CRS.

**#1001 - ~~Vacant.~~ INTENTIONALLY LURING GRAY WOLVES**

Unless permitted by the division, it is unlawful for any person to place any olfactory attractant with the intent to lure gray wolves (*Canis lupus*).

**Basis and Purpose:**

**Adding regulations authorizing livestock owners and their agents to haze gray wolves to prevent or reduce injury to livestock.**

The Colorado Parks and Wildlife Commission, pursuant to § 24-4-103(4)(c), CRS, incorporates this statement of basis and purpose into its new regulation W-10 #1000.A.10, which authorizes livestock owners and their agents, including range riders and sheepherders, to haze gray wolves (*Canis lupus*). The rule discusses when hazing is appropriate and specifies lawful hazing techniques. Such techniques are designed to frighten or annoy gray wolves in order to dissuade them from preying on livestock or livestock guard animals (collectively, “livestock”). Efforts to haze gray wolves should focus on reducing immediate threats to livestock.

The list of scare devices and scare tactics identified in the rule—propane cannons, vehicles, ATVs, noisemakers, fox lights and motion- and radio-activated guard devices—is not exhaustive and other unspecified techniques to scare gray wolves may be used. However, the use of any technique, including those authorized by this rule, in a manner that results in the injury or death of a gray wolf may constitute unlawful harassment or an illegal take. For example, the rule authorizes chasing a gray wolf when necessary to prevent or reduce injury or damages to livestock, but the rule does not authorize chasing a gray wolf for such an extended time or distance that it injures or kills the wolf.

This rule does not regulate efforts to locate or observe gray wolves, whether through persons being in the field or through artificial means, such as photography or drones. The presence of humans in gray wolf habitat is not a hazing technique. This is true regardless of whether an individual is on foot, horseback or using a mechanical device like an ATV. Range riders, sheepherders and other agents are permitted under this rule.

Different hazing techniques present varying levels of risk to wildlife. Such risk increases if a user selects a method that is inappropriate under the circumstances or uses an approved technique improperly. This is especially true for projectile-based techniques. Livestock owners and their agents should fully understand the risks associated with any permitted hazing technique and take appropriate steps to avoid injury or death. For projectile-based techniques, these steps include not shooting gray wolves at close range, in the face, or in other sensitive areas. Livestock owners and their agents are authorized to use approved techniques only to the extent necessary to prevent or reduce injury to livestock, and only in a manner that does not cause injury or death to gray wolves.

The new rule does not authorize individuals to injure or kill gray wolves in defense of livestock. Instead, gray wolves may only be taken in defense of human life, W-10 #1002.B.1. During the rulemaking, some stakeholders advocated for a hazing rule authorizing the incidental take of gray wolves if the death was due to the use of an authorized hazing technique. The Commission did not adopt such an approach in this rulemaking and incidental take of gray wolves is not authorized. The Commission anticipates addressing incidental take of gray wolves and lethal take of gray wolves at a future rulemaking.

During the rulemaking, some stakeholders also questioned whether the use of authorized techniques, particularly, guard dogs and projectile-based techniques, resulting in minor pain or injury to gray wolves would violate the rule or require the responsible party to report such an “injury” to CPW. The answer is no.

The Commission believes that such an approach strikes the appropriate balance among many policy considerations.

Adopting new regulation W-10 #1000.A.10 is consistent with section 33-2-105.8(1)(d), CRS, which requires restoration of gray wolves to be designed to resolve conflicts with livestock owners. Such conflicts can arise where gray wolves prey on livestock. The rule is also reasonably necessary to prevent or reduce potential injury to livestock by the gray wolves currently in the state.

Hazing techniques are used in other states to reduce wolf-livestock conflict and depredation. Hazing allows livestock owners and their agents to temporarily mitigate or prevent livestock damage from occurring. Appropriate hazing can reduce livestock damage, increase social tolerance, and improve attitudes towards wildlife that might otherwise cause damage.

Hazing would not be permitted if gray wolves are on the list of federally threatened or endangered species unless previously authorized by the United States Fish and Wildlife Service. Mexican gray wolves (*Canis lupus baileyi*) are currently listed as federally endangered. This rule does not authorize hazing Mexican gray wolves that may disperse into the state.

The rule incorporates the definition of “livestock” codified in § 35-1-102(6), CRS by reference, which states that “*Livestock’ means cattle, sheep, goats, swine, mules, poultry, horses, alternative livestock, as defined in section 35-41.5-102(1), and such domesticated animals as fox, mink, marten, chinchilla, beaver, and rabbits, and all other animals raised or kept for profit.*” The rule also specifically refers to ‘guard animals’ and authorizes hazing to protect such animals. The Commission intends to adopt a flexible reading of ‘all other animals raised or kept for profit’ as codified in section 35-41.5-102(1), meaning wolves may be hazed if necessary to protect all animals commonly used to support agricultural production, such as cattle dogs, donkeys, and llamas.

The specific statutory authority for new regulation W-10 #1000.A.10 includes § 33-6-128(1), CRS (it is unlawful to harass wildlife unless permitted by CPW) and § 33-2-105.8(1)(d), CRS (gray wolf restoration must be designed to resolve conflicts with farmers and ranchers).

**Adding regulations making it unlawful for any person to place an olfactory attractant with the intent to lure gray wolves.**

Prior to this rulemaking, Colorado Parks and Wildlife prohibited the baiting and luring of wildlife in certain contexts. See, e.g., W-0, #004.A (regulating baits and other aids in taking big game, small game, and furbearers); #021.A (regulating the luring or attracting of big game).

New rule W-10 #1001 prohibits similar conduct with respect to gray wolves (*Canis lupus*). Specifically, it prohibits placing “any olfactory attractant with the intent to lure gray wolves” unless permitted by CPW. For example, the placement of urine or other odorants with the intent to lure gray wolves is prohibited under the new rule.

The new rule applies regardless of whether the individual who placed the olfactory attractant, or any third party, is attempting to hunt gray wolves (which is itself currently unlawful under W-10 #1000). For example, luring gray wolves is prohibited under the new rule even if an individual only intends to take photos of such wildlife.

By using the phrase “with the intent to lure gray wolves” in the new rule, the Commission created a specific intent offense. “A person acts ‘intentionally’ or ‘with intent’ when his conscious objective is to cause the specific result proscribed by the statute [or regulation] defining the offense. It is immaterial to the issue of specific intent whether or not the result actually occurred.” § 18-1-501(5), CRS. This means the new rule does not prohibit common agricultural practices like raising, harvesting, stockpiling, or storing animals, crops, or food.

The statements of basis and purpose for these regulations can be obtained from the Colorado Division of Parks and Wildlife, Office of the Regulations Manager by emailing [dnr\\_cpw\\_planning@state.co.us](mailto:dnr_cpw_planning@state.co.us) or by visiting the Division of Parks and Wildlife headquarters at 6060 Broadway, Denver, CO, 80216.

**The primary statutory authority for these regulations can be found in § 24-4-103, C.R.S., and the state Wildlife Act, §§ 33-1-101 to 33-6-209, C.R.S., specifically including, but not limited to: §§ 33-1-106, C.R.S.**

**EFFECTIVE DATE – THE REGULATIONS HEREIN SHALL BECOME EFFECTIVE MARCH 2, 2022 AND SHALL REMAIN IN FULL FORCE AND EFFECT UNTIL REPEALED, AMENDED OR SUPERSEDED.**

**APPROVED AND ADOPTED BY THE PARKS AND WILDLIFE COMMISSION OF THE STATE OF COLORADO THIS 12TH DAY OF JANUARY, 2022.**

**APPROVED:  
Carrie Besnette Hauser  
Chair**

**ATTEST:  
Luke B. Schafer  
Secretary**

**Philip J. Weiser**  
Attorney General

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Chief Deputy Attorney General

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**STATE OF COLORADO**  
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**Office of the Attorney General**

Tracking Number: **2021-00766**

**OPINION OF THE ATTORNEY GENERAL RENDERED IN  
CONNECTION WITH THE RULES ADOPTED BY THE  
Colorado Parks and Wildlife (406 Series, Wildlife)  
ON 01/12/2022**

**2 CCR 406-10  
CHAPTER W-10 - NONGAME WILDLIFE**

The above-referenced rules were submitted to this office on 01/19/2022 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

**January 28, 2022 16:53:43 MST**

A handwritten signature in blue ink, appearing to read "P. J. Weiser".

**Philip J. Weiser**  
Attorney General  
by Eric R. Olson  
Solicitor General