

ISSUES SUBMITTAL FORM

Date: 04/19/2024

ISSUE:	Should CPW adopt a rule authorizing the use of (A) artificial light, (B) electronic night vision equipment, (C) electronically enhanced light-gathering optics, and (D) thermal imaging devices as aids in injuring or killing gray wolves where such injury or death is otherwise authorized via a permit issued under Chapter W-10?
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DISCUSSION (FACTS AND FIGURES, EXPLANATION OF ISSUE):

OVERVIEW

First, this issue paper proposes CPW adopt new rules authorizing livestock owners to manage gray wolves with the aid of artificial light, electronic night vision equipment, electronically enhanced light-gathering optics, and or thermal imaging devices (collectively, the "Nighttime Aids").

CPW should authorize livestock owners to use the Nighttime Aids to injure or kill gray wolves only where doing so is otherwise lawful under the permit requirements of Chapter W-10. In other words, livestock owners should be authorized to use any and all of the Nighttime Aids where one of the following permit rules applies:

- W-10, #1000.A.11 (Permits for intentionally injurious, non-lethal hazing of gray wolves)
- W-10, #1001.B (Retroactive, In the Act Permits)
- W-10, #1001.C (Chronic Depredation Permits)

ANALYSIS

I. Authorizing Nighttime Aids to injure or kill gray wolves where doing so is otherwise lawful under the permit requirements of Chapter W-10.

Unless otherwise provided by Commission rule, all of the Nighttime Aids are prohibited. See § 33-6-127(1)(a) (prohibiting "any artificial light as an aid in hunting or taking any wildlife."); § 33-6-127(2)(a) (prohibiting "electronic night vision equipment, electronically enhanced light-gathering optics, or thermal imaging devices as an aid in hunting or taking wildlife..."). There is no regulatory exception for these statutory prohibitions for purposes of managing gray wolves, so this issue paper proposes CPW create such an exception.

Title 33 does not provide specific definitions for any of the Nighttime Aids, although § 33-6-127(1)(a) makes it clear that an artificial light is something that "projects" or emits light towards or onto an object (like a lightbulb or laser). CPW regulations do not provide specific definitions for any of the Nighttime Aids either. It is unnecessary for CPW to create specific definitions for any of the Nighttime Aids because it can rely on the commonly understood meanings of the statutory phrases.

CPW regulations create several regulatory exceptions to the statutory prohibition on the use of artificial light:

- Terrestrial invasive species. W-0, #002.M.2
- Fish. W-1, #103.A.9.
- Furbearers. W-3, #303.E.7 & 8
- Night hunting at Karney Ranch SWA. W-9, #901.B.142 and W-9, #903.A.86.
- Damage caused by small game and furbearers. W-17, #17122.H & I.

CPW regulations create one regulatory exception to the statutory prohibition on the use of night vision, for terrestrial invasive species. W-0, #002.M.2.

CPW regulations do not currently create any regulatory exceptions for electronically enhanced light-gathering optics or thermal imaging devices.

In order to authorize livestock owners to use the Nighttime Aids to manage gray wolves, CPW should create a new rule #1001.F, stating:

Any permit authorizing the injurious or lethal take of gray wolves issued by the Division, including retroactive authorization for take of wolves caught in the act of attacking livestock or working dogs, authorizes the livestock owner to use artificial light, electronic night vision equipment, electronically enhanced light-gathering optics, and thermal imaging devices.

STATE LAW REQUIRES CPW TO SOLICIT INPUT FROM STAKEHOLDERS THAT MAY BE AFFECTED POSITIVELY OR NEGATIVELY BY THE PROPOSED RULES. THE FOLLOWING STAKEHOLDERS HAVE BEEN ADVISED OF AND INVITED TO PROVIDE INPUT ON THE REGULATORY CHANGES PROPOSED IN THIS ISSUE PAPER:

***IT IS ASSUMED THAT ALL NECESSARY INTERNAL PARTIES HAVE BEEN NOTIFIED*.**

[List stakeholder groups and briefly summarize comments received]

These groups have not yet been consulted on this issue in a formal manner. Consultation still needs to occur. Livestock producers (including but not limited to CCA, Colorado Farm Bureau); Wolf advocate groups (including but not limited to Rocky Mountain Wolf Project, others); Stakeholder Advisory Group Members; Local and State elected officials; General Public; Colorado Department of Agriculture, CPW staff including biologists, regional staff and others.

ALTERNATIVES: (POSSIBLE OUTCOMES or POSSIBLE REGULATIONS):

1. *Preferred Alternative*: Create new rule #1001.F as follows:

#1001.F Any permit authorizing the injurious or lethal take of gray wolves issued by the Division, including retroactive authorization for take of wolves caught in the act of attacking livestock or working dogs, authorizes the livestock owner to use artificial light, electronic night vision equipment, electronically enhanced light-gathering optics, and thermal imaging devices.

2. Status Quo

Issue Raised by:	Jeff Davis - Director
Author of the issue paper (if different than person raising the issue):	Jake Matter - Colorado Attorney General's Office, Ty Petersburg - Assistant Director of Field Services
CC:	
APPROVED FOR FURTHER CONSIDERATION BY:	Jeff Davis - Director
REQUIRES NEW SPACE IN THE BROCHURE?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
ARE ADEQUATE STAFF AND FUNDING RESOURCES AVAILABLE TO IMPLEMENT?	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
REGION, BRANCH, OR SECTION LEADING IMPLEMENTATION	Field Operations, Field Services
RECOMMENDED FOR CONSENT AGENDA?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO

ISSUES SUBMITTAL FORM

Date: 04/19/2024

ISSUE:	Should CPW's gray wolf compensation program be amended to (I) expand compensation to pooled cattle grazing scenarios and (II) to expand eligibility for compensation to injury or death to bison and associated working dogs?
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DISCUSSION (FACTS AND FIGURES, EXPLANATION OF ISSUE):

I. Pooled Grazing

For Colorado's livestock producers, it is fairly common for multiple cattle owners to graze their stock together, particularly on large, public land grazing allotments. This type of commingled grazing operation is often referred to as a cattle pool. The cattle industry has expressed concern that wolf depredation could happen in a pooled grazing situation where one owner has a confirmed wolf depredation but missing calves or yearlings from another owner within the pool would not be eligible to receive compensation unless that owner also has a confirmed wolf depredation. This issue paper proposes that CPW adopt new rules that would allow pooled cattle owners who have not experienced a confirmed wolf depredation to file for missing calves and yearlings they believe were lost to gray wolves if another pooled owner experiences a confirmed wolf depredation to their commingled cattle.

Current PWC Regulations (Article 16 of W-17) authorize cattle owners who have experienced a confirmed wolf depredation in large, open range situations, to file claims for missing calves and yearlings but do not allow other livestock owners within a pooled grazing situation to file for missing calves and yearlings.

CPW should amend its regulations to make pooled cattle owners eligible for Ratio Claims codified in Chapter 17 by adding new rule #17174 (Pooled Grazing Ratio Claims) as follows:

#17174 – POOLED GRAZING RATIO CLAIMS

- A. The purpose of this regulation #17174 is to extend and modify the rules applicable to individual claimants pursuing Ratio Claims pursuant to #17169 to livestock owners participating in pooled grazing who have not experienced a Confirmed Wolf Depredation (Pooled Owner Claimants). For purposes of this regulation, pooled grazing refers to the practice of two or more livestock owners commingling their domestic cattle into one herd at a single site between spring and winter range. Unless otherwise provided in this regulation #17174, all other requirements of Chapter 17, Article XVI apply.
- B. Under this regulation #17174, Pooled Owner Claimants are eligible to seek compensation for multiple missing calves and yearlings relative to each Confirmed Wolf Depredation experienced by any member of the grazing pool (Confirmed Owner(s)). As stated in regulation #17169, different ratios apply depending on whether the grazing pool, as a whole, took reasonable steps to use Nonlethal Conflict Minimization. Indirect Losses are not compensable under a Ratio Claim or Pooled Grazing Ratio Claim. Pooled Owner Claimants are not eligible to pursue claims for Indirect Losses and are not eligible to pursue a Pooled Grazing Ratio Claim where the Confirmed Owner pursues an Itemized Claim.
- C. A Pooled Owner Claimant is eligible to obtain compensation under this rule provided the following conditions are met:
 - 1. One or more Confirmed Owners experienced one or more Confirmed Wolf Depredations;

2. One or more Confirmed Owners elected to pursue a Ratio Claim pursuant to #17169 or elected to pursue neither of the Optional Claims pursuant to #17169 (Ratio Claims) or #17170 (Itemized Claims); and

3. There is a difference between (1) the total number of missing calves or yearlings for which the Confirmed Owner(s) received compensation and (2) the maximum number of missing calves or yearlings otherwise payable to such Confirmed Owner(s) had they claimed additional animals as missing (Excess Ratio).

D. The Excess Ratio is available to pay otherwise valid Pooled Grazing Ratio Claims.

E. In order to receive compensation, Pooled Owner Claimants must complete a Pooled Grazing Ratio Claim form provided by the Division and file the same with the relevant CPW Area Office within 90 days of the Division's receipt of the Pooled Owner Claimant's last Notice of Loss. Provided, however, Pooled Owner Claimants may elect to delay filing a Proof of Loss form for a Pooled Grazing Ratio Claim up to and including December 31 for the year when the losses were sustained by signing a form prepared by the Division. Incomplete or incorrect forms may be returned to the claimant by the Division. However, the time period for filing Pooled Grazing Ratio Claim forms shall not be altered thereby.

F. Pooled Grazing Ratio Claims are dependent on a Confirmed Owner experiencing a Confirmed Wolf Depredation, will be affected by whether the Confirmed Owner has missing animals for which they seek compensation, and are unavailable where the Confirmed Owner elects to pursue an Itemized Claim. Accordingly, the Division will review Pooled Grazing Ratio Claims annually and in conjunction with its review of any claims filed by Confirmed Owners.

G. On a Pooled Grazing Ratio Claim form provided by the Division, the Pooled Owner Claimant must certify, to the best of their knowledge, that their missing calves or yearlings were lost due to gray wolves and not other predators, disease, or other factors. The Pooled Owner Claimant must also certify, to the best of their knowledge, that their missing calves or yearlings were from the same pooled herd of domestic cattle as the herd associated with the prior Confirmed Wolf Depredation(s). The Pooled Owner Claimant must also certify, to the best of their knowledge, the total number of cattle turned out for grazing and the total brought in at the end of the grazing season, including those owned by the Pooled Owner Claimant and the pool in the aggregate.

H. Nothing in this regulation is intended to increase the ratio of compensable missing animals relative to each Confirmed Wolf Depredation as codified in regulation #17169.

I. In situations where Pooled Owner Claimants are missing animals in excess of the available and applicable ratio, priority shall be given to Confirmed Owners. Confirmed Owners are entitled to the full benefit of the applicable ratio before any Pooled Owner Claimants are entitled to any ratio-based compensation. Provided, however, no Confirmed Owner may receive compensation in an amount in excess of the applicable ratio codified in regulation #17169.

J. In situations where there is an Excess Ratio, but it is inadequate to fully compensate all remaining Pooled Owner Claimants, such owners shall meet and confer in an attempt to reach a stipulated resolution of their claims. If a stipulation is reached, the claimants shall jointly notify the Division of the stipulation in writing. If the Pooled Owner Claimants cannot reach a stipulation, the Division will prioritize payments to Pooled Owner Claimants who have lost a higher proportion of animals relative to the total number of animals they had in the pool and to claimants who have a history of uncompensated Pooled Grazing Ratio Claims.

II. Domestic Bison as a Compensable Species

Proposition 114, now codified in section 33-2-105.8, CRS, requires CPW to “[p]ay fair compensation to owners of livestock for any losses of livestock caused by gray wolves.” § 105.8(2)(e)(2). Proposition 114 specifically defined “livestock” as “cattle, horses, mules, burros, sheep, lambs, swine, llama, alpaca, and goats.” § 105.8(5)(c) (“Proposition 114 Livestock”).

CPW’s gray wolf compensation program is currently limited to compensating producers for damages to Proposition 114 Livestock and injury or death to Proposition 114 Livestock guard animals and Proposition 114 Livestock herding animals (including veterinarian expenses and medical supplies).

This issue paper proposes CPW expand its current gray wolf compensation program to include domestic bison, including hybrids with domestic cattle, where such animals are injured or killed by a gray wolf. Doing so would also extend CPW’s compensation program to guard animals and herding animals that were injured or killed in connection with a domestic bison operation. For purposes of this issue paper “domestic bison” has the same meaning as in W-11; #1103.A (“Domestic animals - The following animals are considered domestic and are exempted from the requirements of Parks and Wildlife Commission regulations: ... Bison (*Bison*) including hybrids with domestic cattle.”).

This issue paper is limited to expanding CPW’s Base Compensation Claims to domestic bison. Such claims only compensate for death or injury caused by gray wolves. See W-17; #17165 – #17166 (Base Compensation Claims). This issue paper does not propose making owners of domestic bison eligible for Ratio Claims or Itemized Claims, codified in W-17; #17169 – #17170.

These amendments are the result of concerns raised by the Southern Ute Indian Tribe and other domestic bison producers. A proposed redline is provided below:

#17161 - DEFINITIONS APPLICABLE TO ARTICLE XVI

H. “Livestock” has the same meaning codified in § 33-2-105.8(5)(c), CRS (“Livestock’ means cattle, horses, mules, burros, sheep, lambs, swine, llama, alpaca, and goats.”) **and also includes domestic bison, including hybrids with domestic cattle.**

STATE LAW REQUIRES CPW TO SOLICIT INPUT FROM STAKEHOLDERS THAT MAY BE AFFECTED POSITIVELY OR NEGATIVELY BY THE PROPOSED RULES. THE FOLLOWING STAKEHOLDERS HAVE BEEN ADVISED OF AND INVITED TO PROVIDE INPUT ON THE REGULATORY CHANGES PROPOSED IN THIS ISSUE PAPER:

***IT IS ASSUMED THAT ALL NECESSARY INTERNAL PARTIES HAVE BEEN NOTIFIED*.**

[List stakeholder groups and briefly summarize comments received]

These groups have not yet been consulted on this issue in a formal manner. Consultation still needs to occur. Livestock producers (including but not limited to CCA, Colorado Farm Bureau); Wolf advocate groups (including but not limited to Rocky Mountain Wolf Project, others); Stakeholder Advisory Group Members; Local and State elected officials; General Public; Colorado Department of Agriculture, CPW staff including biologists, regional staff and others.

ALTERNATIVES: (POSSIBLE OUTCOMES or POSSIBLE REGULATIONS):

1. ***Preferred Alternative*:** Create new rules stating pooled cattle owners can rely on a Confirmed Wolf Depredation experienced by another member of the pool as a basis to seek available ratio-based compensation by adopting new rule #17174 (Pooled Grazing Ratio Claims) **AND** adding bison to the definition of livestock for purposes of providing compensation for injury or death to livestock caused by gray wolves.

<p>2. Alternative 2: Create a new rule stating pooled cattle owners can rely on a Confirmed Wolf Depredation experienced by another member of the pool as a basis to seek ratio-based compensation by adopting new rule #17174 (Pooled Grazing Ratio Claims).</p> <p>3. Alternative 3: Adding bison to the definition of livestock for purposes of providing compensation for injury or death to livestock caused by gray wolves.</p> <p>4. Alternative 4: Status quo.</p>	
Issue Raised by:	Jeff Davis - Director
Author of the issue paper (if different than person raising the issue):	Luke Hoffman - Game Damage Program Manager, Matt Thorpe - Southwest Deputy Region Manager, Jake Matter - Attorney General's Office
CC:	Reid DeWalt - Assistant Director Aquatic, Terrestrial, and Natural Resources, Brian Dreher - Terrestrial Section Manager, Eric Odell - Species Conservation Manager, David Klute - Species Conservation Unit Supervisor, Fletcher Jacobs - Assistant Director Outdoor Recreation and Lands
APPROVED FOR FURTHER CONSIDERATION BY:	Jeff Davis - Director
REQUIRES NEW SPACE IN THE BROCHURE?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
ARE ADEQUATE STAFF AND FUNDING RESOURCES AVAILABLE TO IMPLEMENT?	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
REGION, BRANCH, OR SECTION LEADING IMPLEMENTATION	Game Damage Program
RECOMMENDED FOR CONSENT AGENDA?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO

ISSUES SUBMITTAL FORM

Date: 4/19/2024

ISSUE:	Should CPW revise its existing regulations in Chapter W-10 to (I) make it clear that pooled livestock owners are eligible to receive any of the three gray wolf permits AND (II) add language defining domestic bison as "livestock?"
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DISCUSSION (FACTS AND FIGURES, EXPLANATION OF ISSUE):

OVERVIEW

This issue paper proposes CPW adopt new rules clarifying that pooled livestock owners are eligible for all three permits codified in Chapter W-10. The current rules suggest that pooled owners are only eligible to receive a chronic depredation permit. See W-10, #1001.C.3.a.i ("If the Permit Applicant's livestock are part of a herd composed of livestock owned by multiple owners, any owner of livestock in the same herd may also qualify for a Chronic Depredation Permit.").

The eligibility for pooled owners to receive a Chronic Depredation Permit – codified in W-10, #1001.C.3.a.i – should be clarified and expressly extended to W-10, #1000.A.11 (Permits for intentionally injurious, non-lethal hazing of gray wolves) and W-10, #1001.B (Retroactive, In the Act Permits).

Secondly, this issue paper proposes that the definition of "Livestock" found in PWC #1000.D.3 be changed to add "domestic bison, including hybrids with domestic cattle" so that domestic bison owners are eligible for Chronic Depredation permits, Intentionally Injurious non-lethal hazing permits, and Retroactive In the Act permits.

ANALYSIS

(I) Clarifying that pooled livestock owners are eligible for all three types of permits codified in Chapter W-10.

CPW's chronic depredation permit rule makes it clear that a livestock owner in a pool is eligible to receive a chronic depredation permit, stating: "If the Permit Applicant's livestock are part of a herd comprised of livestock owned by multiple owners, any owner of livestock in the same herd may also qualify for a Chronic Depredation Permit." W-10, #1001.C.3.a.i. This express authorization is not contained in W-10, #1000.A.11 (injurious hazing permits) and W-10, #1001.B (in the act permits).

CPW should clarify that pooled livestock owners are eligible for all three permits codified in Chapter W-10 by repealing current rule #1001.C.3.a.i. and replacing it with new rule #1001.G, stating:

If a livestock owner's livestock are part of a herd composed of livestock owned by multiple owners, any owner of livestock in the same herd may also qualify for any of the gray wolf permits authorized in this chapter.

(II) Clarify PWC #1000.D.3 to include "domestic bison, including hybrids with domestic cattle" in the definition of Livestock, codified in Chapter W-10.

Livestock means cattle, horses, mules, burros, sheep, lambs, swine, llama, alpaca, ~~and~~ goats and domestic bison, including hybrids with domestic cattle.

STATE LAW REQUIRES CPW TO SOLICIT INPUT FROM STAKEHOLDERS THAT MAY BE AFFECTED POSITIVELY OR NEGATIVELY BY THE PROPOSED RULES. THE FOLLOWING STAKEHOLDERS HAVE BEEN ADVISED OF AND INVITED TO PROVIDE INPUT ON THE REGULATORY CHANGES PROPOSED IN THIS ISSUE PAPER:

***IT IS ASSUMED THAT ALL NECESSARY INTERNAL PARTIES HAVE BEEN NOTIFIED*.**

[List stakeholder groups and briefly summarize comments received]

These groups have not yet been consulted on this issue in a formal manner. Consultation still needs to occur. Livestock producers (including but not limited to CCA, Colorado Farm Bureau); Wolf advocate groups (including but not limited to Rocky Mountain Wolf Project, others); Stakeholder Advisory Group Members; Local and State elected officials; General Public; Colorado Department of Agriculture, CPW staff including biologists, regional staff and others.

ALTERNATIVES: (POSSIBLE OUTCOMES or POSSIBLE REGULATIONS):

1. *Preferred Alternative*:

(I) Repeal current rule #1001.C.3.a.i. and replacing it with new rule #1001.G, stating:

If a livestock owner's livestock are part of a herd composed of livestock owned by multiple owners, any owner of livestock in the same herd may also qualify for any of the gray wolf permits authorized in this chapter.

AND

(II) Clarify PWC #1000.D.3 to include "domestic bison, including hybrids with domestic cattle" in the definition of Livestock, codified in Chapter W-10.

Livestock means cattle, horses, mules, burros, sheep, lambs, swine, llama, alpaca, ~~and~~ goats and domestic bison, including hybrids with domestic cattle.

2. Status Quo

Issue Raised by:	Jeff Davis - Director
Author of the issue paper (if different than person raising the issue):	Ty Petersburg - Assistant Director of Field Services, Jake Matter - Colorado Attorney General's Office
CC:	CPW Executive Management Team, Matt Thorpe – Southwest Deputy Region Manager, Luke Hoffman - Game Damage Coordinator
APPROVED FOR FURTHER CONSIDERATION BY:	Jeff Davis - Director
REQUIRES NEW SPACE IN THE BROCHURE?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
ARE ADEQUATE STAFF AND FUNDING RESOURCES AVAILABLE TO IMPLEMENT?	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
REGION, BRANCH, OR SECTION LEADING IMPLEMENTATION	Outdoor Recreation and Lands
RECOMMENDED FOR CONSENT AGENDA?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO