

ISSUES SUBMITTAL FORM

Date:

10/13/2021

ISSUE:	Should the Commission make it unlawful for any person to place any olfactory attractant with the intent to lure any state threatened or endangered species unless permitted by the Division?
DISCUSSION (FACTS AND FIGURES, EXPLANATION OF ISSUE):	
CPW generally prohibits the use of “bait” as an aid in hunting or taking big game, small game, and furbearers pursuant to W-0 #004. <i>See also</i>, § 33-4-101.3(3), CRS (“It is unlawful for any person to take a black bear with the use of bait...”); § 33-6-119(3), CRS (“It is unlawful for any person to use wildlife as bait unless otherwise provided by rule of the commission.”). Proposed rule W-10 #1001, below, would enact a similar, yet broader, prohibition concerning threatened and endangered species. The proposed rule is broader because it would prohibit the placement of any olfactory attractant with the intent to lure threatened and endangered species, not just the placement of “bait.” <i>Compare</i> § 33-4-101.3(5), CRS (“For purposes of [the bear baiting statute] ‘bait’ means to place, expose, deposit, distribute, or scatter salt, minerals, grain, animal parts, or other food, so as to constitute a lure, attraction, or enticement for black bears on or over any area where hunters are attempting to take black bears.”); W-0 #000A.5 (“‘Baiting’ means the placing, exposing, depositing, distributing, or scattering of any salt, mineral, grain, or other feed so as to constitute a lure, attraction or enticement for wildlife.”). For example, the placement of urine or other odorants with the intent to lure threatened or endangered species would be prohibited under the proposed rule. The proposed rule is also broader because it would apply regardless of whether the individual who placed the olfactory attractant, or any third party, is attempting to hunt threatened or endangered species (which is itself currently unlawful under W-10 #1000). For example, luring threatened or endangered wildlife would be prohibited under the proposed rule even if an individual only intends to take photos of such wildlife. By using the phrase “intent to lure any threatened or endangered species” in the proposed rule, the Commission would create 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. If adopted, the proposed rule would make luring threatened and endangered wildlife a specific intent offense because CPW does not propose, among other things, to criminalize common lawful agricultural practices, such as raising, harvesting, stockpiling, or storing animals, crops, or food.	
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.	
ALTERNATIVES: (POSSIBLE OUTCOMES or POSSIBLE REGULATIONS):	
1. Preferred Alternative: W-10 #1001 is currently “Vacant.” This issue paper proposes creating new W-10 #1001 as follows: W-10 #1001 – INTENTIONALLY LURING THREATENED OR ENDANGERED SPECIES	

Unless permitted by the division, it is unlawful for any person to place any olfactory attractant with the intent to lure any threatened or endangered species as defined in #1002 and #1003. 2. Status quo.	
Issue Raised by:	Division
Author of the issue paper (if different than person raising the issue):	AG's Office
CC:	
APPROVED FOR FURTHER CONSIDERATION BY:	
REQUIRES NEW SPACE IN THE BROCHURE?	☐ YES ☒ NO
ARE ADEQUATE STAFF AND FUNDING RESOURCES AVAILABLE TO IMPLEMENT?	☒ YES ☐ NO
REGION, BRANCH, OR SECTION LEADING IMPLEMENTATION	
RECOMMENDED FOR CONSENT AGENDA?	☐ YES ☒ NO