

EMERGENCY 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 #020.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 non-injurious hazing techniques when necessary to prevent or reduce injury or damages to livestock and guard animals caused by gray wolves (*Canis lupus*). For purposes of this rule, "livestock" is defined in § 35-1-102(6), CRS.
 - a. "Non-injurious hazing techniques" means the use of:
 - (i) Livestock herding or guard animals,
 - (ii) Fladry or electrified fladry,
 - (iii) Cracker shells,
 - (iv) Scare devices or tactics including propane cannons, vehicles, ATVs, range riders, noisemakers, fox lights and motion- and radio-activated guard devices.
 - b. Hazing must be consistent with federal law. If gray wolves are on the list of federally endangered or threatened species, hazing that creates a likelihood of injury or actually injures or kills wolves is prohibited unless authorized by the Division or by the U.S. Fish and Wildlife Service or its agents.

11. The Division may issue permits to livestock owners for intentionally injurious, non-lethal hazing of gray wolves after confirming gray wolf activity on a specific parcel of private land owned by the applicant or private or public land leased by the applicant for livestock production. The permit authorizing such activities is valid for not longer than one year and will contain additional terms and conditions, including a description of where such activities may occur. Any person who injures or kills a gray wolf must report the injury or death to the Division within 24 hours, unless impracticable, but in no event later than 72 hours. Fatal injury to wolves resulting from non-lethal hazing is prohibited.

B. Take of Nongame, Threatened or Endangered Species

1. Any person may take nongame, threatened or endangered wildlife in defense of their life or the life of other people. Any person who takes such action must report the same to the Division within 24 hours, unless impracticable, but in no event later than 72 hours.
2. All threatened or endangered fish taken by any means shall be returned unharmed to the water immediately.
3. While conducting an otherwise lawful activity, including, but not limited to, live trapping or hunting bobcat, taking action pursuant to 33-6-207, C.R.S., to protect livestock, protection of livestock through the use of guard dogs, or taking action pursuant to 33-3-106, C.R.S., to prevent death or injury to human life or livestock, a Canada lynx is:
 - a. accidentally captured, but not injured, it shall be released immediately and the capture shall be reported to the Division within 24 hours;
 - b. accidentally injured, but not in the possession of the person, the injury shall be reported to the Division within 24 hours;
 - c. accidentally injured and in the possession of the person, the Canada lynx shall be immediately delivered to the Division or taken to a licensed veterinarian for appropriate care and reported to the Division within 24 hours;
 - d. accidentally killed, then it shall be reported to the Division within 24 hours and the carcass shall be delivered to the Division within 3 (three) days of the report.

Any failure to provide the required notice to the Division or to deliver the injured or dead Canada lynx to the Division within the time periods allowed shall be prima facie evidence of unlawful take and possession of Canada lynx.

For the purposes of this subsection, "accidental" specifically excludes any intentional, knowing or negligent action on behalf of any person or a person's agent or employee.

4. The Division may capture, remove, transport, release, or destroy gray wolves where necessary to protect human health or safety.

C. Intentionally Luring Gray Wolves

Unless permitted by the Division, it is unlawful for any person to use an electronic call device or place any olfactory attractant with the intent to lure gray wolves (*Canis lupus*).

D. As used in this Chapter, the following definitions apply unless the context requires otherwise:

1. Conflict minimization measures means lawful, nonlethal materials and techniques used by owners of livestock for purposes of avoiding, minimizing, or mitigating gray wolf damage to livestock. Conflict minimization measures include hazing techniques authorized in this Chapter.

2. In the act of attacking means the actual biting, wounding, grasping, or killing of livestock or working dogs, or chasing, molesting or harassing by wolves that would indicate to a reasonable person that such biting, wounding, grasping, or killing of livestock or working dogs is likely to occur at any moment.
3. Livestock means cattle, horses, mules, burros, sheep, lambs, swine, llama, alpaca, ~~and~~ goats and domestic bison, including hybrids with domestic cattle.
4. Livestock owner means owners of livestock, their immediate family members, agents, employees, contractors, or volunteers. A livestock owner may be an owner or lessee of private land where livestock are legally grazed or a lessee of or permittee on public land for the purposes of grazing and raising livestock.
5. Working dogs means dogs regularly used for herding or guarding livestock.

AS APPROVED 08/22/2024
Basis and Purpose
Chapter 10 - Nongame Wildlife

Basis and Purpose:

The purpose of this emergency rulemaking is to correct a recent clerical error.

In June 2024, the Commission revised regulation W-10:1000.D.3 to expand the definition of “livestock” to include domestic bison, including hybrids with domestic cattle. Tracking No: 2024-00196; 2 CCR 406-10, Chapter W-10 (Nongame Wildlife). Prior to the June revision, domestic bison producers could not lawfully injure or kill gray wolves depredating on domestic bison. The Commission expanded its regulatory definition of livestock to include domestic bison, enabling domestic bison producers to injure or kill wolves depredating on bison, like other Bovidae raised or kept for profit.

In July 2024, the Commission revised regulation W-10:1000.D.2 to insert “working dogs” into the rule. Tracking No: 2024-00254; 2 CCR 406-10, Ch. W-10 (Nongame Wildlife). But when it did so, a clerical error was made to the redline version of regulation W-10:1000 and it failed to capture the regulatory changes made in June. In doing so, the reference to bison in the definition of livestock was inadvertently removed. This emergency rulemaking corrects the error by readopting the changes made in June to expand the definition of livestock to include domestic bison, including hybrids with domestic cattle.

The state Administrative Procedures Act enables the Commission to pass emergency rules without notice where it “finds that immediate adoption of the rule is imperatively necessary to comply with a state or federal law or federal regulation or for the preservation of public health, safety, or welfare and compliance with the requirements of [the APA notice provisions] would be contrary to the public interest and makes such a finding on the record.” § 24-4-103(6)(a), C.R.S. The Commission finds and concludes that such requirements are satisfied here. The emergency rule amendment is necessary to “resolve conflicts with persons engaged in ranching and farming in this state.” § 33-2-105.8(1)(d), C.R.S. Furthermore, wolf conflicts are ongoing and additional delays associated with a standard rulemaking would be contrary to the public interest.

The primary statutory authority for these regulations can be found in § 24-4-103(6)(a), C.R.S., § 33-2-105.8(1)(d), C.R.S. and § 33-2-106(4), C.R.S.

The statements of basis and purpose for these regulations can be viewed and copies obtained from the Colorado Division of Parks and Wildlife, Office of the Regulations Manager, Public Involvement Unit, 6060 Broadway, Denver, CO 80216.

EFFECTIVE DATE - THESE EMERGENCY REGULATIONS SHALL BECOME EFFECTIVE IMMEDIATELY UPON ADOPTION AND SHALL REMAIN IN EFFECT FOR NO MORE THAN 120 DAYS OR UNTIL PERMANENT REGULATIONS TAKE EFFECT, WHICHEVER OCCURS FIRST, OR THE EMERGENCY REGULATIONS ARE OTHERWISE REPEALED, AMENDED, OR SUPERSEDED.

APPROVED AND ADOPTED BY THE PARKS AND WILDLIFE COMMISSION OF THE STATE OF COLORADO THIS 22ND DAY OF AUGUST 2024.

APPROVED:
Dallas May
Chair

ATTEST:
Karen Bailey
Secretary

Phil Weiser
Attorney General

Natalie Hanlon Leh
Chief Deputy Attorney General

Shannon Stevenson
Solicitor General

Tanja Wheeler
Associate Chief Deputy
Attorney General



STATE OF COLORADO
DEPARTMENT OF LAW

Ralph L. Carr
Colorado Judicial Center
1300 Broadway, 10th floor
Denver, CO 80203
Phone 720-508-6000

Office of the Attorney General

Tracking Number: **2024-00398**

**OPINION OF THE ATTORNEY GENERAL RENDERED IN
CONNECTION WITH THE RULES ADOPTED BY THE
Colorado Parks and Wildlife (406 Series, Wildlife)
ON 08/22/2024**

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

The above-referenced rules were submitted to this office on 08/23/2024 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.

August 29, 2024 16:06:53 MST

Philip J. Weiser
Attorney General
by Russell D. Johnson
Deputy Solicitor General