

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 #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 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.

#1001 - AUTHORIZATION FOR REMOVAL, CAPTURE OR DESTRUCTION OF ENDANGERED, THREATENED, OR NONGAME GRAY WOLVES

A. Colorado Division of Parks and Wildlife Employees and Agents

1. Capture and relocation of nongame, endangered, or threatened gray wolves is prohibited except as carried out by the Division or its agents or by the U.S. Fish and Wildlife Service or its agents.

B. Injurious and Lethal Take of Wolves In the Act of Attacking Livestock or Working Dogs

1. Injurious and lethal take of gray wolves by livestock owners is permitted when a wolf is observed in the act of attacking livestock or working dogs, but only in accordance with these regulations.
2. A permit is required for livestock owners to engage in injurious or lethal control of gray wolves caught in the act of attacking livestock or working dogs. ("In The Act Permits"). Take of wolves attacking a pet or hunting dog is not authorized.
3. The Division will issue a permit to a livestock owner (Permit Applicant) retroactively authorizing take of gray wolves observed in the act of attacking livestock or working dogs, provided the following conditions are met.
 - a. The attack on livestock or working dogs must have taken place on the Permit Applicant's private property or on private, state, or federal lands leased for livestock grazing or production under a valid lease held by the Permit Applicant.

- b. The Permit Applicant must preserve and provide evidence that the gray wolves were in the act of attacking livestock or working dogs at the time the wolves were injured or killed.
 - i. The carcass of the wolf or wolves and of any animals the wolves were attacking, as well as the surrounding area, must not be disturbed in order to preserve the requisite physical evidence. Where no carcass is present, acceptable physical evidence includes but is not limited to photographs or video with GPS coordinates attached.
 - 4. In order to obtain a retroactive permit from the Division, the Permit Applicant must notify the Division of injury or death to gray wolves within 24 hours of such injury or death unless impracticable, but in no event later than 72 hours after such injury or death. Wolves injured or killed under these permits will remain the property of the state.
 - 5. The Division shall not issue any permit under this subsection #1001.B (In The Act Permits) unless the U.S. Fish and Wildlife Service has adopted a rule under section 10(j) of the Endangered Species Act designating and providing management flexibility for a non-essential experimental population of wolves in Colorado *and* that rule is effective at the time of the issuance of any In The Act Permit. Further, the Division shall not issue an In the Act Permit for any act that injured or killed a wolf in violation of the Endangered Species Act and its regulations in place at the time of the act.
- C. Injurious and Lethal Take of Chronically Depredating Gray Wolves
- 1. The Division will make the determination as to whether a situation qualifies for a Chronic Depredation Permit after considering the following factors:
 - a. Documented repeated depredation and harassment of the Permit Applicant's livestock or working dogs caused by the wolf, wolves, or pack targeted;
 - b. Use of a variety of nonlethal conflict minimization materials and techniques;
 - c. Likelihood that additional and continued wolf-related depredation would continue if lethal control is or is not implemented;
 - d. Unintentional or intentional use of attractants that may be luring or baiting wolves to the location.
 - 2. Consistent with state and federal law, injurious or lethal control of wolves that have engaged in confirmed depredation(s) of livestock will be conducted by state or federal agents if the Division determines lethal control of the identified wolves is appropriate under the circumstances.
 - 3. If state and federal agencies do not have the capacity to carry out the timely implementation of the necessary lethal control measures, the Division may issue a Chronic Depredation Permit for the lethal take of wolves to a livestock owner (Permit Applicant), consistent with the conditions below. A Chronic Depredation Permit authorizes a holder to injure or kill wolves in the permit area, regardless of whether they are in the act of attacking livestock or working dogs.

- a. The Permit Applicant must have suffered at least one wolf depredation of their own livestock or working dogs, and the Division must have confirmed the depredation within 30 days prior to requesting a Chronic Depredation Permit.
 - ~~i. 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.~~
 - b. The Division must determine that the Permit Applicant employed reasonable conflict minimization techniques prior to receiving a Chronic Depredation Permit.
 - c. The permit may authorize lethal take of wolves only on the Permit Applicant's private property or on private, state, or federal lands leased for livestock production under a valid lease held by the Permit Applicant.
 - d. The permit authorizing such activities will contain additional terms and conditions, including a limitation on how many wolves may be taken under the Permit and may, in the discretion of the Division, authorize the use of artificial light, electronic night vision equipment, electronically enhanced light-gathering optics, and thermal imaging devices.
 - e. A Chronic Depredation Permit is valid for a maximum of 45 days. The Division may terminate the Permit at any time once threats to livestock or working dogs have been resolved or minimized. After the initial 45 days, the Permit may be renewed at the Division's discretion.
 - f. Death or injury to wolves must be reported to the Division within 24 hours unless impracticable, but in no event later than 72 hours after such death or injury.
4. The Division shall not issue any Chronic Depredation Permit under this subsection #1001.C unless the U.S. Fish and Wildlife Service has adopted a rule under section 10(j) of the Endangered Species Act designating and providing management flexibility for a non-essential experimental population of wolves in Colorado *and* that rule is effective at the time of the issuance of any Chronic Depredation Permit.
- D. Wolf specimen disposition
1. The entire carcass of wolves killed by private individuals for any purpose, legal or illegal will be returned to CPW and remain state property, regardless of whether the incident occurred on public or private land.
- E. Chapter W-16 of these rules codifies the procedures applicable to securing authorization from the Division to injuriously or lethally take gray wolves, including retroactive authorization for take of wolves caught in the act of attacking livestock or working dogs.
- F. Permits for intentionally injurious, non-lethal hazing of gray wolves issued pursuant to W-10, #1000.A.11 and permits for injurious and lethal take of gray wolves in the act of attacking livestock or working dogs issued pursuant to W-10, #1001.B authorize the livestock owner to use artificial light, electronic night vision equipment, electronically enhanced light-gathering optics, and thermal imaging devices. State and federal agencies may use such technologies to haze, injure or kill gray wolves where otherwise authorized by law. Livestock owners and their agents may use such technologies to conduct non-injurious hazing as authorized pursuant to W-10, #1000.A.10.

G. 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.

Basis and Purpose:

Modifying the definition of livestock to include domestic bison

Proposition 114, now codified in section § 33-2-105.8, CRS, specifically defined “livestock” as “cattle, horses, mules, burros, sheep, lambs, swine, llama, alpaca, and goats.” These changes expand the livestock definition to include domestic bison, including hybrids with domestic cattle. They also expand regulations making domestic bison owners eligible for chronic depredation permits, intentionally injurious non-lethal hazing permits, and retroactive in the act permits. These amendments are the result of concerns raised by the Southern Ute Indian Tribe and other domestic bison producers.

Clarifying pooled livestock owners are eligible for all three types of wolf permits codified in Chapter W-10

The current regulations suggest that pooled owners are only eligible to receive a chronic depredation permit. (See Chapter W-10, regulation #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.”) This express authorization was not contained in Chapter W-10, regulation #1000.A.11 (injurious hazing permits) or Chapter W-10, regulation #1001.B (in the act permits). These changes are a cleanup to clarify that pooled livestock owners are eligible for all three types of permits codified in Chapter W-10.

Adopting regulations for the use of “Nighttime Aids” for wolves causing damage

Section 33-6-127, C.R.S. makes it unlawful for any person to use artificial light, electronic night vision equipment, electronically enhanced light-gathering optics, or thermal imaging devices (Nighttime Aids) as an aid in hunting or taking wildlife, unless the Commission adopts rules allowing their use. In this rulemaking, the Commission created limited exceptions to the section 33-6-127 prohibition on the use of Nighttime Aids.

The new rules authorize the use of Nighttime Aids where a livestock owner has obtained a permit for intentionally injurious, non-lethal hazing of gray wolves pursuant to W-10, #1000.A.11.

The new rules also authorize the use of Nighttime Aids where a livestock owner obtains a retroactive permit for injurious and lethal take of gray wolves in the act of attacking livestock or working dogs pursuant to W-10, #1001.B.

The new rules also make it clear that the use of Nighttime Aids is permissible where a livestock owner or their agents use such aids to conduct non-injurious hazing as authorized pursuant to W-10, #1000.A.10.

The new rules also make it clear that the use of Nighttime Aids may be used by state or federal agents to haze, injure or kill gray wolves where otherwise authorized by law.

The use of Nighttime Aids may not be used where a livestock owner obtains a chronic depredation permit pursuant to W-10, #1001.C., unless the Division specifically authorizes their use, which the Division can do under the new rules on a case-by-case basis in its discretion. The Commission revised W-10, #1001.C.3.d in this rulemaking as follows: “The permit authorizing such activities will contain additional terms and conditions, including a limitation on how many wolves may be taken under the Permit and may,”

in the discretion of the Division, authorize the use of artificial light, electronic night vision equipment, electronically enhanced light-gathering optics, and thermal imaging devices.”

The Wolf Restoration and Management Plan and associated regulations contemplate that “injurious or lethal control of wolves that have engaged in confirmed depredation(s) of livestock will be conducted by state or federal agents.” W-10, #1001.C.2. “If state and federal agencies do not have the capacity to carry out the timely implementation of the necessary lethal control measures, the Division may issue a Chronic Depredation Permit for the lethal take of wolves to a livestock owner....” W-10, #1001.C.3. The Commission believes that automatically enabling private parties to use the Nighttime Aids while acting under a Chronic Depredation Permit could lead to the accidental take of nontarget wolves or other undesirable outcomes and that giving the Division discretion to authorize their use on a case-by-case basis under such a permit strikes the appropriate balance among many policy considerations.

The Commission adopted the new and amended regulations in recognition of the fact that it is common practice for producers to use artificial light when checking their livestock around the clock, especially during the calving season. The Commission recognizes that some producers also use the other nighttime technologies when checking on livestock. The new and amended rules are intended to further the requirement that “restoration of the gray wolf to the state must be designed to resolve conflicts with persons engaged in ranching and farming in this state.” § 33-2-105.8(1)(d), C.R.S. The new and amended rules are also consistent with section 33-6-107(9), which contains a statutory exception to the use of Nighttime Aids for the take of numerous species where such animals are causing damage to crops, real or personal property, or livestock.

The primary statutory authority for the new and amended rules includes section 33-6-127, C.R.S. (Commission may adopt rules authorizing the use of Nighttime Aids) and section § 33-2-105.8(1)(d), C.R.S. (“restoration of the gray wolf to the state must be designed to resolve conflicts with persons engaged in ranching and farming in this state.”).

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, Policy and Planning Unit, 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 - THESE REGULATIONS SHALL BECOME EFFECTIVE AUGUST 1, 2024 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 JUNE 2024.

**APPROVED:
Dallas May
Chair**

**ATTEST:
Karen Bailey**

Secretary