

**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.A020.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 hHazing techniques" means the use of:
    - (i) Livestock herding or guard animals,
    - (ii) Fladry or electrified fladry,
    - (iii) Cracker shells ~~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.~~
  - be. 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. United States Fish and Wildlife Service or its agents.

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

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 of Wildlife within 24 hours;

b. accidentally injured, but not in the possession of the person, the injury shall be reported to the Division of Wildlife within 24 hours;

c. accidentally injured and in the possession of the person, the Canada lynx shall be immediately delivered to the Division of Wildlife or taken to a licensed veterinarian for appropriate care and reported to the Division of Wildlife within 24 hours;

d. accidentally killed, then it shall be reported to the Division of Wildlife within 24 hours and the carcass shall be delivered to the Division of Wildlife within 3 (three) days of the report.

Any failure to provide the required notice to the Division of Wildlife 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. #1001--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.
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.
  - 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.

## **ARTICLE II - ENDANGERED WILDLIFE**

### **#1002 - DESIGNATION OF SPECIES**

- A. Endangered Species Designation: The following wildlife are hereby declared endangered.
- 1. Fish
    - Bonytail <sup>1</sup>
    - Razorback Sucker <sup>1</sup>
    - Rio Grande Sucker
    - Northern Redbelly Dace
    - Southern Redbelly Dace
    - Plains Minnow
    - Suckermouth Minnow
    - Lake Chub

2. Birds
  - Plains Sharp-tailed Grouse
  - Whooping Crane <sup>1</sup>
  - Least Tern <sup>1</sup>
  - Southwestern Willow Flycatcher <sup>1</sup>

3. Mammals
  - Kit Fox
  - Gray Wolf <sup>1</sup>
  - Grizzly Bear <sup>2</sup>
  - Black-footed Ferret <sup>1</sup>
  - Wolverine
  - Lynx <sup>2</sup>

4. Amphibians
  - Boreal (Western) Toad

<sup>1</sup> Appears on Federal List as Endangered.

<sup>2</sup> Appears on Federal List as Threatened.

~~B. Take of Threatened and Endangered Species~~

- ~~1. Any person may take threatened or endangered wildlife in defense of his life or the life of others.~~
- ~~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 of Wildlife within 24 hours;~~
  - ~~b. accidentally injured, but not in the possession of the person, the injury shall be reported to the Division of Wildlife within 24 hours;~~
  - ~~c. accidentally injured and in the possession of the person, the Canada lynx shall be immediately delivered to the Division of Wildlife or taken to a licensed veterinarian for appropriate care and reported to the Division of Wildlife within 24 hours;~~
  - ~~d. accidentally killed, then it shall be reported to the Division of Wildlife within 24 hours and the carcass shall be delivered to the Division of Wildlife within 3 (three) days of the report.~~~~

~~Any failure to provide the required notice to the Division of Wildlife or to deliver the injured or dead Canada lynx to the Division of Wildlife 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 employ~~



### **Basis and Purpose:**

This statement sets forth the basis, specific statutory authority, and purpose for new and amended regulations of the Colorado Parks and Wildlife Commission (Commission). In adopting the new and amended regulations, the Commission relied upon the entire administrative record for this rulemaking proceeding. The specific statutory authority for the new and amended rules includes §§ 33-2-105, 33-2-105.8, 33-2-106, and 33-2-107, CRS.

### **Background**

Colorado voters approved Ballot Initiative 114 in the November 2020 state election. The measure is now codified at § 33-2-105.8, CRS, as amended by [HB 21-1243](#). The law directs the Commission to restore the gray wolf (*Canis lupus*) to the state; develop a plan to manage gray wolves in Colorado aimed at establishing and maintaining a self-sustaining population; and assist livestock owners in preventing and resolving conflicts with wolves. § 33-2-105.8, CRS. The Commission has developed a Wolf Restoration and Management Plan (Plan) to accomplish these ends. The Plan is an interpretive rule under the provisions of § 24-4-103(1), and does not trigger formal rulemaking requirements under that section. State law, however, requires the Commission to adopt regulations to implement certain portions of the Plan. See § 33-2-106(4). These amendments to Chapter W-10 of the Commission regulations provide a framework to assist in implementation of the Plan in compliance with § 33-2-106(4). The new rules apply to gray wolves in the state, regardless of whether such wolves have naturally migrated or were released.

This statement of basis and purpose provides an overview of the new regulations in Chapter W-10, which create a system of permits to authorize, where appropriate, the removal, capture, or destruction of state-listed gray wolves in order to alleviate damage to property or for other purposes. Such regulations enable owners of livestock to file applications with CPW seeking to injuriously or lethally take gray wolves, including applications seeking retroactive authorization for take of wolves caught in the act of attacking livestock or working dogs.

### **Federal and State Endangered Species Laws**

Both the United States and the State of Colorado have enacted laws to protect vulnerable species of wildlife: the federal Endangered Species Act, 16 U.S.C. §§ 1531 *et seq.* and Colorado's Nongame, Endangered, or Threatened Species Conservation Act, §§ 33-2-101 *et seq.*, C.R.S. As of the date of this rulemaking gray wolves are listed as endangered under both acts. Both acts generally prohibit harming or killing endangered animals, but both provide some flexibility in those prohibitions as well.

Under the Supremacy Clause in the United States Constitution, Art. VI, Clause 2, the provisions of the federal ESA take precedence over those of the State's act. The specific preemption provision of the Endangered Species Act, 16 U.S.C. § 1535(f), however, provides in addition that (1) the ESA "shall not [ ] be construed to void any State law or regulation which is intended to conserve migratory, resident, or introduced fish or wildlife," with some restrictions, and that (2) [a]ny State law or regulation respecting the taking of an endangered species or threatened species may be more restrictive than [the ESA and its regulations and permits] but not less restrictive."

Accordingly, the permits provided for in these regulations are either consistent with or more protective than federal regulations adopted under the ESA governing endangered species generally, and experimental populations introduced under section 10(j) of the ESA specifically. The Colorado Division of

Parks and Wildlife (CPW) is not authorized under these regulations to issue any permits for injurious or lethal take of wolves unless such take is also authorized by regulations adopted pursuant to the ESA.

### **Overview of Permits Created By These Regulations**

In accordance with federal and state law, these regulations create three types of permits for injurious or lethal take of gray wolves. All are specifically required by § 33-2-106(4) to authorize take of state-listed species, which provides that

Upon good cause shown and where necessary to alleviate damage to property or to protect human health, endangered or threatened species may be removed, captured, or destroyed but only pursuant to permit issued by the division and, where possible, by or under the supervision of an agent of the division.

The first type of permit, an In The Act Permit, found at #1001.B, is designed to provide retroactive authorization for take of wolves by livestock owners or their agents when a wolf is caught in the act of attacking livestock or working dogs. These permits serve to provide, retroactively, authorization for take when a livestock owner cannot otherwise secure a permit in time to prevent harm to or death of their animals.

The second type of permit, found at #1001.C, a Chronic Depredation Permit, authorizes CPW to issue a permit to a livestock owner or its agents for take of “chronically depredating wolves.” The rule provides specific elements CPW must consider before issuing this type of permit, as well as restrictions on the length of time the permit may be active and the location in which the permit may be used. Terms and conditions of the permit will specify other requirements and limitations, including how many wolves may be taken. CPW will not issue a Chronic Depredation Permit to livestock owners unless neither federal nor state agents are available to exercise control over chronically depredating wolves.

A third type of permit in these regulations, found at #1000.A.11, authorizes livestock owners, under certain circumstances to engage in intentionally injurious, non-lethal hazing of gray wolves. This permit authorizes hazing that may otherwise be prohibited under state and federal law.

### **Other Changes**

These regulations also provide definitions of terms used, make changes to align the regulations with the requirements of the Plan and with federal regulations, provide reporting requirements, and provide for proper disposition of wolf carcasses.

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.

**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 JULY 1, 2023 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 3RD DAY OF MAY, 2023.**

**APPROVED:  
Carrie Besnette Hauser  
Chair**

**ATTEST:**  
**Marie Haskett**  
**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: **2023-00191**

**OPINION OF THE ATTORNEY GENERAL RENDERED IN  
CONNECTION WITH THE RULES ADOPTED BY THE  
Colorado Parks and Wildlife (406 Series, Wildlife)  
ON 05/03/2023**

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

The above-referenced rules were submitted to this office on 05/11/2023 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.

**May 22, 2023 10:11:21 MST**

**Philip J. Weiser**  
Attorney General  
by Kurtis Morrison  
Deputy Attorney General