



NOTICE OF PUBLIC RULEMAKING HEARING

FOR AMENDMENTS TO

“Rules Pertaining to the Control of Depredating Animals”

8 CCR 1201-12, Parts 1, 3.7.1, 4, 7 and 12.4

Notice is hereby given pursuant to § 24-4-103 C.R.S. that the Department of Agriculture will hold a public rulemaking hearing:

DATE: May 20, 2020
TIME: 1:00 pm
LOCATION: Colorado Department of Agriculture
Big Thompson Conference Room
305 Interlocken Parkway
Broomfield, Colorado 80021
CALL IN OPTION: If gathering restrictions remain in place due to the COVID-19 Pandemic, the hearing will be held by phone at 1-240-903-4130 PIN: 418-877-961#. The call-in line will not be open if the hearing is conducted at the above location.

The purpose of this rulemaking is to clarify that dogs may be used as a non-lethal depredation deterrent and that artificial light may be used with all depredating animals, including bears and mountain lions. Other changes include adding additional details to the definition of “Group of animals” and specifying which US Fish and Wildlife Service office should be contacted if a federally protected species is inadvertently captured in a trap specifically designed not to kill.

The statutory authority for these rules is §35-40-101(2)(a) and (c), C.R.S.

Any interested party may file written comment with the Commissioner’s office prior to the hearing, or present at the aforementioned hearing written data, views or arguments. Emailed comments should be sent to the hearing officer at Jenifer.Gurr@state.co.us. A copy of the proposed rule is available on the Department of Agriculture’s website at www.colorado.gov/ag or may be obtained by calling 303-869-9004. The proposed rule shall be available for public inspection at the Colorado Department of Agriculture at 305 Interlocken Parkway, Broomfield, Colorado during regular business hours.



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COLORADO DEPARTMENT OF AGRICULTURE

Animal Industry Division

8 CCR 1201-12

RULES PERTAINING TO THE CONTROL OF DEPREDATING ANIMALS

Part 1. DEFINITIONS

- 1.1. "Agricultural product" means any plants or animals produced in farming or ranching, including, but not limited to, horticultural, floricultural, viticultural, aquacultural, forestry and vegetable products, dairy, livestock, bees and honey.
- 1.2. "Agricultural resource" means any natural resource relevant to agriculture, including, but not limited to, land, water and the conveyances of water, soil, and growing plants.
- 1.3. "Animal" means coyotes, foxes, bobcats, bears, mountain lions, wolves, beavers, muskrats, raccoons, opossums, and striped skunks, as set forth at § 35-40-100.2(1), C.R.S.
- 1.4. "At risk" means any animal, as defined in § 35-40-100.2(1), C.R.S., that has been designated by the Parks and Wildlife Commission as endangered, threatened, or at risk, pursuant to § 35-40-100.2(1.5) (a), (b), and (c), C.R.S.
- 1.5. "Body grip device" means a mechanical device designed to kill an animal quickly upon capture.
- 1.6. "Cable device trap, aka, snare" means any powered or non-powered device made of stranded steel cable set in a manner that a loop of cable encircles the animal's body or limb to achieve capture.
- 1.7. "Carcass" means the meat and internal organs of game wildlife and domestic animals and does not include bones, hides, or other nonedible parts.
- 1.8. "Commissioner" means the Colorado Commissioner of Agriculture or an employee of the Department as designated by the Commissioner.
- 1.9. "Coursing dog" means a dog that pursues primarily by sight.
- 1.10. "CPW" means the Colorado Division of Parks and Wildlife.
- 1.11. "Decoy dog" means a dog used to distract or lure depredating animals.
- 1.12. "Department" means the Colorado Department of Agriculture.
- 1.13. "Drag" means an object attached to a trap to retard the movement of a trap and to detain an animal.
- 1.145. "Employee" means a person hired or retained by, or under a written or oral contract or cooperative agreement with, a property owner, operator, or lessee to perform services of any kind. An employee may include, among others, the Wildlife Services, the Department, or any other government agency.

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- 1.1~~54~~. "Enclosed foothold trap" means any mechanical device designed to encapsulate and hold an animal's foot. These foot-encapsulating devices are highly species-selective by design.
- 1.16. "Feral swine" means any species or hybrid of species from the family Suidae (European boar, Eurasian boar, Russian boar, feral hog) or the family Tayassuidae (Javelina and peccary), which possesses one or more morphological characteristic distinguishing it from domestic swine including, but not limited to, an elongated snout, visible tusks, muscular shoulders with small hams and short loins, coarse hair, or a predominant ridge of hair along its back. For the purposes of these Rules, any swine running at large that possesses one or more of the above characteristics, may be presumed to be a feral hog, unless a person has received actual notice that the swine has escaped containment and its return is actively sought.
- 1.17. "Foothold trap, aka, leghold trap" means any mechanical device with jaws designed to catch an animal by the foot.
- 1.18. "Group of animals" means more than a singular animal but not more than a local depredating population of that species. This definition shall not be construed to include an entire species across a county, region or the state.
- 1.19. "Guard dog" means a dog utilized to protect livestock.
- 1.20. "Historically occurred" means damage that has occurred within the past five years by the same species of depredating animal to the same agricultural product or agricultural resource in a given geographic area.
- 1.21. "Identified designee" means a person as specified in Part 2, who is authorized by the property owner, operator, or lessee to control depredating animals.
- 1.22. "Lethal cable device trap" means a cable device trap designed to kill an animal upon capture.
- 1.23. "Livestock" means cattle, sheep, goats, swine, mules, poultry, horses, alternative livestock as defined in § 35-41.5-102(1), C.R.S., and such domesticated animals as fox, mink, marten, chinchilla, beaver, and rabbits, and all other animals raised or kept for profit.
- 1.24. "Live trap (cage or box)" means a mechanical device designed in such a manner that the animal enters the trap through an opening that prevents the animal from exiting.
- 1.25. "Mechanical or spring-powered cable device trap" means a mechanically or spring-powered device that assists in tightening the loop of the cable around the body, foot, or leg of an animal.
- 1.26. "Necessary to prevent" means when, due to the proximity and known conduct or behavior of the depredating species, taking of the depredating animal is necessary to prevent damage to agricultural products that is likely to occur as a result of the depredating animal.
- 1.27. "Nonlethal cable device trap" means a cable device trap with a stopping device designed to prevent strangulation of the species for which the cable device trap is set, or a mechanical or spring-powered cable device trap designed to catch the animal by the body, foot, or leg.
- 1.28. "Non-target" means an animal of a species not intended to be taken.
- 1.29. "Pan tension" means the amount of pressure required to activate a trap, as measured at the center of the pan.

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- 1.30. "Predacide" means a state and federally registered pesticide designed to kill predators, but does not include repellents.
- 1.31. "Stake" means a device that anchors a trap in place.
- 1.32. "Trailing dog" means a dog that pursues primarily by smell.
- 1.33. "Traps specifically designed not to kill" means padded, laminated, or off-set steel jawed foothold traps, enclosed foothold, box traps, ~~and~~ cage traps, and nonlethal cable device traps as conditioned elsewhere in these regulations.
- 1.34. "Wildlife Services" means the U. S. Department of Agriculture, Animal and Plant Health Inspection Service, Wildlife Services.

Part 3.00 CONTROL OF DEPREDATING ANIMALS EXCEPT BLACK BEARS AND MOUNTAIN LIONS

- 3.7.1. To avoid the taking of river otter, trapping in the areas set forth in 3.7.1.1 through 3.7.1.4 is prohibited except with: a) padded, laminated, or off-set jaw traps; b) body grip devices with a maximum jaw spread less than 7 X 7 inches in size; or c) land or water set cable device traps with a closure size of 16 inch circumference or larger. Provided further that padded, laminated, or off-set jaw traps and cable device traps may not be used in ~~a~~ drowning sets.

Part 4.00 CAPTURE OF NON-TARGET ANIMAL OR OTHER SPECIES

- 4.1. In the event of live capture of a non-target animal or other species that is not a state or federally identified threatened, endangered, at risk or otherwise protected species, the non-injured animal shall be immediately released. An injured animal shall be quickly and humanely killed or transported to a current CPW-licensed wildlife rehabilitator. If the animal cannot be released without human endangerment, the animal shall be quickly and humanely killed.
- 4.2. If the non-target animal is a state or federally identified threatened, endangered, at risk or otherwise protected species, the following provisions apply:
 - 4.2.1. If the non-target animal is uninjured and can be released without human endangerment, the animal shall be immediately released.
 - 4.2.2. If the non-target animal cannot be released without human endangerment or is injured refer to applicable ~~federal~~state and/or ~~federal~~state law pertaining to other disposition, reporting requirements and penalties. For information regarding federal law, contact the ~~assistant regional director for law enforcement of the~~Special Agent in Charge, U.S. Fish and Wildlife Service, Lakewood, CO; for information regarding state law, contact CPW.

Part 7.00 CONTROL OF DEPREDATING BLACK BEARS AND MOUNTAIN LIONS

- 7.1. Black bears and mountain lions may be taken by means other than those prohibited by § 33-6-203, C.R.S. by the owners of livestock and their families, employees, agents, and identified designees, and by government agencies and employees pursuant to §§ 33-3-106(3) and 33-4-101.3(4), C.R.S., when it is necessary to prevent the black bears or mountain lions from inflicting death or injury to livestock. In the case of black bears or mountain lions, the phrase "necessary to prevent" as it relates to death or injury to livestock, is limited to the specific black bear(s) or lion(s)

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that is (are) reasonably believed to pose a threat and is (are) in the proximity, and when damage to livestock is likely to occur or has occurred.

7.2. Traps

7.2.1. An owner or lessee of a parcel of private property, or the employees of such owner or lessee, or identified designee may use foothold traps, mechanical or spring-powered foot cable device traps on black bears or mountain lions on his parcel of private property so long as the following conditions are met as provided by § 33-6-207(1), C.R.S.:

7.2.1.1. The property is primarily used for commercial livestock or crop production; and

7.2.1.2. The use of the methods otherwise prohibited by § 33-6-203, C.R.S., occurs only on the owner or lessee's property; and

7.2.1.3. Such use does not exceed one thirty-day period per year for each parcel of private property; and

7.2.1.4. The owner or lessee can present on-site evidence to CPW that ongoing damage to livestock or crops has not been alleviated by the use of methods other than those prohibited by § 33-6-203, C.R.S.

7.2.2. For the purpose of taking depredating black bears or mountain lions, foothold traps, or mechanical or spring-powered foot cable device traps may be utilized within 30 feet of a carcass.

7.3. Where documented historical damage has occurred, Wildlife Services is authorized to take depredating black bears or mountain lions to allow effective take of the animal(s) that pose a threat. This authorization may be modified by the Commissioner through written agreements if such modification facilitates effective control measures.

7.4. All take of black bears and mountain lions shall be reported to CPW within five days to allow CPW the opportunity to inspect the depredating animal. Said report shall include any information requested by CPW.

7.5. For any black bear or mountain lion taken pursuant to these rules and not taken with a valid CPW license during the applicable season, the carcass shall be left where taken, unless delivered pursuant to Part 7.6. CPW has the responsibility to recover or dispose of the carcass or to allow it to decay.

7.6. Owners of agricultural products or resources, their family members, employees, agents and identified designees shall not possess black bears or mountain lions, or the parts thereof, unless taken with a valid CPW license during the applicable season. The following activities shall be permitted up to five days after take:

7.6.1. Delivery of the carcass or parts thereof by the person taking the animal to the owner or manager of agricultural products or resources for verification of kill; after verification, the owner or manager shall make the carcass or parts that were delivered available for CPW's recovery and disposal; or

7.6.2. Voluntary delivery of said carcass or parts to the CPW.

7.7. Black bears or mountain lions may be relocated only by CPW.

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7.8. Dogs

7.8.1. Guard dogs, decoy dogs, coursing dogs, and trailing dogs are allowed. Incidental take by these dogs is not unlawful.

7.9 Artificial Light

7.9.1. An owner or lessee of a parcel of private property, or the employees of such owner or lessee, or identified designee may use artificial light on private land where depredation has occurred or is occurring.

7.9.2. An owner of livestock, or the employees of such owner or lessee, or identified designee may also use artificial light on public lands when taking depredating animals where depredation has occurred or is occurring, except:

7.9.2.1. During the 24-hour period prior to and during any regular deer, elk, or pronghorn rifle season and during the 24-hour period prior to and during the opening weekend of any grouse, pheasant, quail, turkey, or waterfowl season, unless prior authorization is obtained from the Commissioner with notification to CPW; or

7.9.2.2. In any areas where human safety would be jeopardized.

Part 12.00 STATEMENTS OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE

12.4. Adopted – June 10, 2020 – Effective July 30, 2020

Statutory Authority

The amendments to these rules are proposed to the Commissioner of the Colorado Department of Agriculture (“Commissioner”) for adoption pursuant to authority as set forth in the Predatory Animals Act, § 35-40-101(2)(a) and (c), C.R.S.

Purpose

The purpose of this rule-making is to clarify that dogs may be used as a non-lethal depredation deterrent and that artificial light may be used with all depredating animals, including bears and mountain lions. Other changes include adding additional details to the definition of “Group of animals” and specifying which US Fish and Wildlife Service office should be contacted if a federally protected species is inadvertently captured in a trap specifically designed not to kill.

Factual and Policy Issues

In February of 2017, Colorado Parks and Wildlife (CPW) assembled a trapping workgroup consisting of individuals from different branches within the agency as well as from the Colorado Department of Agriculture (CDA), United States Department of Agriculture (USDA), and the Colorado Trappers and Predator Hunters Association (CTPHA). This group was tasked with updating CPW’s trapping regulations to incorporate new industry best management practices (BMPs), increase animal welfare, and make CPW regulations consistent with those of CDA.

In March of 2018, CDA used the same trapping workgroup to review and update CDA’s Rules Pertaining to the Control of Depredating Animals and to bring them into alignment with CPW’s recently adopted trapping regulations.

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In late 2019 CPW changed the name of this working group to the Furharvester Working Group and added additional tasks. CDA used members of this Furharvester Group to review these proposed changes.

Specific changes

The proposed rules re-order the definitions of “enclosed foothold trap” and “employee” to alphabetize them; add “across a county, region or the state” to clarify the definition of “group of animals”; and add “nonlethal cable device traps” into the definition of “traps specifically designed not to kill” because nonlethal cable device traps are by design traps specifically designed not to kill.

A change to Part 3.7.1 removes a grammatically incorrect “a.”

The changes to Part 4.2.2 re-order the words “federal” and “state” for consistency with the rest of the rule; update the title of the US Fish and Wildlife Service employee to be contacted if a federally protected species is captured; and further specify that inquiries regarding federal law related to the capture of federally protected species be made specifically with the Lakewood, Colorado, office.

The changes to Part 7 add the use of guard dogs, decoy dogs, coursing dogs and trailing dogs as a non-lethal means of hazing potential predatory bears and mountain lions away from livestock. As well, the changes add the use of artificial light as a tool for livestock owners to protect their livestock from depredation by bears and lions.