

4. COUGAR PILOT PROGRAM REGULATIONS – RULE ACTION

TABLE OF CONTENTS

	<u>Page</u>
Decision Page	<i>i</i>
WAC 232-28-285 2009-2010 Pilot cougar hunting seasons with the aid of dogs	1
Recommended Adjustments to WAC 232-28-285	8
Summary of Written Public Input.....	10
Summary of Oral Public Input Received at the June 5-6, 2009 Commission Meeting.....	11
CR 102	12

“GREEN SHEET”

Meeting: July 10-11, 2009

Agenda Item 4: Cougar Pilot Program Regulations – **Rule Action**

Prepared By: Donny Martorello

Presented By: Donny Martorello, Ph.D., Carnivore, Furbearer & Special Species Manager,
Wildlife Program

Background:

Department staff will provide a brief overview to the Commission on proposed amendments to WAC 232-28-285 2009-2010 Pilot cougar hunting seasons with the aid of dogs. This will include any changes resulting from the June 5-6, 2009 Commission meeting.

Substitute Senate Bill 6118 and Engrossed Substitute House Bill (ESHB) 1765 allowed the use of dogs to pursue and kill cougar under a pilot program from 2004 to 2007 in Chelan, Okanogan, Ferry, Stevens, and Pend Oreille counties. During the 2007 legislative session, ESHB 2438 was signed into law extending the authority to the same five counties for an additional three years. ESHB 2438 also provides a process for other Washington counties to request inclusion in the pilot program. To date only Klickitat County has requested inclusion into the pilot program and participated in the program during the 2008-09 winter season.

Like the precursors, the purpose of ESHB 2438 to address public safety and the protection of private property (e.g., pets and livestock), as well as to allow the Department to more effectively manage cougar populations. The Department is recommending a status quo season for the 2009-2010 pilot cougar hunt, with the following exceptions:

- 1) Remove the requirement that hunters must own dogs capable of treeing a cougar to be eligible for a permit. The reason for this recommendation is because the Department does not believe that the success of the program rests on limiting participation to dog owners only and implementing the dog owner restriction has been problematic in the past.
 - 2) Change the opening day of the permit hunt from January 5 to December 19, 2009 (except GMUs 101, 105, and 204). The original recommendation was January 5 (the purpose was to remove overlap with the permit hunt without dogs from December 1-31; WAC 232-28-272). The revised recommendation is due to public testimony.
 - 3) Change the date of the second drawing (when necessary to achieve targeted harvest) from January 15 to February 15. The purpose of the recommendation is to have a later second drawing date due to the later season start date.
 - 4) For the second drawing, select applicants from the entire pool of unselected applicants rather than those just from the participating counties. The rationale for this recommendation is because the Department has not detected any significant advantage (i.e., in success rates) by limiting participation to a subset of unselected applicants and expanding the pool of applicants will not hinder our ability to reach the programs objectives.
 - 5) Routine calendar date changes for the six counties continuing the pilot program.
-

Policy Issue(s) you are bringing to the Commission for consideration:
Implement ESHB 2438.

Public involvement process used and what you learned:

The County Commissioners for the six county areas have met with local constituents before meeting on several occasions with Department staff. Informal discussions have been held between stakeholders and Department staff as well. These proposed recommendations were sent to approximately 450 organizations and individuals in April for their review and consideration. These organizations and individuals were also informed of the opportunity to provide public testimony at the June Commission meeting in Olympia.

Action requested (identify the specific Commission decisions you are seeking):

Amend WAC 232-28-285 2009-2010 Pilot cougar hunting seasons with the aid of dogs, as presented.

Draft motion language:

I move to amend WAC 232-28-285, as proposed.

Justification for Commission action:

Enhance public safety and provide a more effective cougar management program.

Communications plan:

- News Release
 - Hunting Pamphlets
 - WDFW Website
-

AMENDATORY SECTION (Amending Order 08-197, filed 8/13/08, effective 9/13/08)

WAC 232-28-285 ((2008-2009)) 2009-2010 Pilot cougar hunting seasons with the aid of dogs. As used in this section and in the context of pilot cougar hunting seasons, the following definitions apply:

"Accompany" means the dog handler and permit hunter must be in the physical presence of each other at the time dogs are released from a leash or unrestrained or starting a cougar track.

"Pursue" or "pursuit" means dogs are:

- ✎ Not on a leash or restrained; or
- ✎ Starting a cougar track; or
- ✎ In the act of tracking a cougar; or
- ✎ At a treed cougar.

Transporting dogs in a motorized vehicle or walking a dog on a leash is not pursuit.

"Dog (~~owner~~) handler" means a person that owns (~~and~~) or hunts with dogs that are capable of detecting, tracking and treeing a cougar.

"Quota" means the targeted harvest goal. The actual harvest level may exceed the quota.

"Kill permit" allows a hunter to pursue or kill cougar.

"Pursuit permit" allows a hunter to pursue cougar.

(1) The pilot cougar-hunting season will allow use of dogs

to hunt cougar. The hunts will consist of pursuit-or-kill seasons and pursuit-only seasons(~~(, and are allowed only in Klickitat, Chelan, Okanogan, Ferry, Stevens, and Pend Oreille counties)~~).

(2) Pursuit-or-kill seasons:

Cougar may be pursued or killed with the aid of dogs from ~~((December 1, 2008))~~ January 5, 2010~~December 19, 2009,~~ until the female zone quota has been killed, the total zone quota has been killed, or March 31, ~~((2009))~~ 2010, whichever occurs first(~~(+ EXCEPT GMUs 101 and 204 where cougar may be pursued or killed from January 1, 2009, until the female zone quota has been killed, the total zone quota has been killed, or March 31, 2009, whichever occurs first))~~); EXCEPT GMUs 101, 105, and 204 where cougar may be pursued or killed from January 1, 2010, until the female zone quota has been killed, the total zone quota has been killed, or March 31, 2010, whichever occurs first.

(3) Pursuit-only seasons:

(a) If a zone quota is killed prior to March 31, ~~((2009))~~ 2010, cougar may be pursued with dogs in all or portions of that zone until March 31, ~~((2009))~~ 2010. Hunters may only pursue cougars in designated pursuit only areas identified on their kill or pursuit-only permit. Hunters may not kill cougar during pursuit-only seasons.

(b) Hunters selected for the pursuit-or-kill season (accompanied by up to three of their identified handlers) may participate in a pursuit-only season. Permit hunters that harvest a cougar under a kill permit may continue to pursue cougars until March 31. If a zone quota is killed, the

department may also issue pursuit-only permit to hunters drawn at random from the unselected pool of applicants. The director will identify the number of pursuit-only hunters selected.

(4) Hunt areas and kill quotas:

Cougar seasons will be based on a quota system, where permit hunters (~~(using dogs)~~) may hunt and kill cougar until the allotted numbers of cougar have been killed from each hunt zone or March 31, (~~(2009)~~) 2010, whichever occurs first.

(a) Kill quotas start September 1 and will include all cougar killed during seasons with and without the aid of dogs, including cougar seasons under this section, cougar seasons without the aid of dogs authorized under WAC 232-28-272 and 232-28-287, depredation permits, landowner kill permits, and WDFW depredation authority.

(b) Individual problem cougar will continue to be killed on an as-needed basis utilizing depredation permits, landowner kill permits, and WDFW depredation authority even if these kills result in exceeding a zone quota.

CMU	Hunt Choice	Hunt Zone	Area Description	QUOTA	
				Total	Female
East Cascades North	9001	Okanogan	Those portions of GMUs 203, 209, 215, 218, 233, 224, 231, 239, and 242 within Okanogan County	17	7
	9002	Chelan	Those portions of GMUs 243, 244, 245, 246, 247, 249, 250, and 251 within Chelan County	6	2
Northeastern	9003	Ferry-Okanogan	GMUs 101, <u>105</u> , 204	<u>4620</u>	<u>68</u>
	9004	Stevens-Pend Oreille	Those portions of GMUs 105 , 108, 111, 113, 117, 121 within Stevens and Pend Oreille counties	<u>2319</u>	<u>97</u>
East Cascades South	9005	Klickitat	Those portions of GMUs 382, 388, 578 within Klickitat County	6	2

(5) Quota hotline:

Permit hunters participating in a pursuit-or-kill season

must call the toll free cougar quota hotline within twenty-four hours prior to each day hunting cougar to determine if the zone quota has been killed and the zone is closed. Hunters who hunt more than one consecutive day must call the quota hotline once daily to determine if the zone quota is killed. Hunters who harvest a cougar with the aid of dogs must notify the department within twenty-four hours of kill (excluding legal state holidays) and provide the hunter's name, date and location of kill, and sex of animal. The raw pelt of a cougar, with proof of sex naturally attached, must be sealed by an authorized department employee within five days of the notification of kill. Any person who takes a cougar must present the cougar skull in such a manner that teeth and biological samples can be extracted to an authorized department employee at the time of sealing.

(6) Kill or pursuit-only permit eligibility:

~~(a) ((To apply for a kill or pursuit only permit under this section, individuals must sign an affidavit provided by the department, certifying under penalty of false swearing under RCW 9A.72.040 that they are a dog owner. The affidavit must be mailed to WDFW by the date and time identified by the director. Individuals not registered as a dog owner will not be issued a permit.~~

~~(b))~~ To apply for a kill or pursuit-only permit under this section, individuals must purchase a cougar permit application and submit the application in compliance with WAC 232-28-291 by a date and time identified by the director.

~~((c))~~ (b) To be eligible for a permit, the participant

must be a Washington resident who at the time of application for a permit possesses a valid big game license with cougar as a species option. The permit holder (~~((must))~~) may use dogs while participating in a cougar hunt under this section.

~~((d))~~ (c) A permit will not be issued to any person who has been convicted of unlawful use of dogs under RCW 77.15.245 within the five-year period prior to December 1, 2004. Any person issued a permit and who is subsequently convicted of any wildlife offense while participating in a pursuit-or-kill or pursuit-only season, or who violates any condition of the permit, will have the permit revoked and will be ineligible to participate in the remainder of the pilot program.

(7) Permit issuance procedure:

(a) The number of kill permits (~~((for a pursuit or kill season with the aid of dogs))~~) may be established by the director, but will not exceed two times the total cougar quota for each hunt zone.

(b) The department will issue kill or pursuit-only permits to the persons whose applications are drawn at random. Individuals selected will be notified by telephone or mail. Kill and pursuit-only permits may not be sold or reassigned.

(c) If a female zone quota or total zone quota is not killed in a hunt zone by (~~((January))~~) February 15 (or sooner as identified by the director), then the department may issue kill permits to additional hunters. Hunters will be drawn at random from the unselected pool of applicants (~~((and must be a resident of one of the participating counties))~~).

(8) Qualifications for participation and requirements:

In addition to the provisions applicable to all cougar hunters:

(a) Successful applicants must complete a training program prior to participating in a pursuit-or-kill season or pursuit-only season with the aid of dogs.

(b) Participants must have their permit issued by the department in their possession while hunting cougar.

(c) Individuals selected for a kill permit may kill and possess one cougar per permit and only the permittee may kill the cougar(~~(+s)~~).

(d) Individuals selected for a cougar kill or pursuit-only permit may use dog handlers. However, no more than three handlers may accompany the permittee while hunting or pursuing cougar. Dog handlers may not pursue cougar when the permit hunter is not present at the time the dogs are released from a leash or unrestrained. Dog handlers must have a dog handler identification card, issued by the department, in their possession while participating in a pursuit-or-kill season or pursuit-only season.

(e) Dog handlers must (~~be a Washington resident and~~) possess a valid Washington hunting license.

(f) It is unlawful to kill or possess spotted cougar kittens or adult cougars accompanied by spotted kittens.

(g) Participants must have a vehicle placard issued by the department. The vehicle placard must be placed in the permittee's and dog handler's vehicles and be visible from outside the vehicles at all times while hunting or pursuing cougar.

(h) Kill and pursuit-only permit hunters are required to report their hunting activity, whether they harvest a cougar or not, using the toll free cougar quota hotline. Unsuccessful hunters must report their hunting activity by April 10, 2009. A violation of this requirement under this subsection is punishable as an infraction under RCW 77.15.160.

(9) The permit belongs to the state of Washington. The permit holder may be required to return to or turn over to the department the permit when, in the judgment of the department, the permit holder violates any conditions of the permit, violates trespass laws while acting under this permit, or violates any other criminal law or hunting regulation of the state while acting under this permit. If the permit holder is required to return to or turn over to the department the permit, the permit holder may request an appeal of that action in accordance with chapter 34.05 RCW. Appeal request shall be filed in writing and returned within twenty days of the date of action and be addressed to WDFW Legal Services Office, 600 Capitol Way North, Olympia, Washington 98501-1091.

[Statutory Authority: RCW 77.12.047, 77.12.040, 77.12.020, 77.12.570, 77.12.210. 08-17-034 (Order 08-197), § 232-28-285, filed 8/13/08, effective 9/13/08. Statutory Authority: RCW 77.12.047. 07-22-102 (Order 07-273), § 232-28-285, filed 11/6/07, effective 12/7/07; 06-17-095 (Order 06-196), § 232-28-285, filed 8/15/06, effective 9/15/06; 05-17-098 (Order 05-174), § 232-28-285, filed 8/15/05, effective 9/15/05; 04-21-036 (Order 04-284), § 232-28-285, filed 10/14/04, effective 11/14/04.]

WAC 232-28-285 2009-2010 Pilot cougar hunting seasons with the aid of dogs

RECOMMENDED ADJUSTMENTS

The following adjustments are proposed since the Code Reviser (CR-102) filing and are already included in your notebook.

Page 1

Change the title of the WAC from:

WAC 232-28-285 2010 Pilot cougar hunting seasons with the aid of dogs.

To:

WAC 232-28-285 2009-2010 Pilot cougar hunting seasons with the aid of dogs.

This change is because the Department is recommending the cougar season open December 19, 2009, so the title needs to reflect the appropriate years.

Page 2

Under subsection 2, change the opening day from January 5, 2010 to December 19, 2009. This change is in response to public testimony (original recommendation was Jan. 5, 2010 opening day).

Under subsection 2, add:

;EXCEPT GMUs 101, 105, and 204 where cougar may be pursued or killed from January 1, 2010, until the female zone quota has been killed, the total zone quota has been killed, or March 31, 2010, whichever occurs first.

This change is to accommodate the ongoing cougar DNA project in the hunt zone which occurs from late November to December 31, 2009.

Change the area descriptions and quota levels for Ferry-Okanogan and Stevens-Pend Oreille zones from:

CMU	Hunt Choice	Hunt Zone	Area Description	QUOTA	
				Total	Female
Northeastern	9003	Ferry-Okanogan	GMUs 101, 204	16	6
	9004	Stevens-Pend Oreille	Those portions of GMUs 105, 108, 111, 113, 117, 121 within Stevens and Pend Oreille counties	23	9

To:

CMU	Hunt Choice	Hunt Zone	Area Description	QUOTA	
				Total	Female
Northeastern	9003	Ferry-Okanogan	GMUs 101, 105, 204	20	8
	9004	Stevens-Pend Oreille	Those portions of GMUs 108, 111, 113, 117, 121 within Stevens and Pend Oreille counties	19	7

The purpose of the change is because GMU 105 is now a part of the Ferry-Okanogan Zone and not the Stevens-Pend Oreille Zone; due to similar habitat conditions, elevations, and road density. As such, a portion of the zone quota was shifted from Stevens-Pend Oreille Zone to Ferry-Okanogan Zone.

SUMMARY OF WRITTEN PUBLIC INPUT

WAC 232-28-285 2009-2010 Pilot cougar hunting seasons with the aid of dogs

COMMENTS	AGENCY RESPONSE
Drop the requirement that individuals must own dogs to participate in the pilot hound hunt.	Thank you for your comment. The Department is recommending removing the dog ownership requirement.
Drop the requirement that individuals must be residents of one of the participating counties to be eligible for the second drawing.	Thank you for your comment. The Department is recommending that all unselected applicants be eligible for the second drawing.
Require a dog handle and dog training test to ensure dogs do not chase other wildlife.	Thank you for your comment. During the first four years of the pilot program hunters were required to maintain a log book of all hunting activity. We did not see an issue with dogs tracking wildlife other than cougar.
Require that owners contact information be attached to all dogs participating in the program.	Thank you for your comment. Most dogs that we have encountered or are aware of already are marked with identification. Thus, we have not seen any reoccurring issues about wondering dogs with no identification.

SUMMARY OF ORAL PUBLIC INPUT
 Received at the June 5-6, 2009 Commission Meeting

WAC 232-28-285 2009-2010 Pilot cougar hunting seasons with the aid of dogs

COMMENTS	AGENCY RESPONSE
I support allowing non-dog owners to participate in the pilot cougar program.	Thank you for your comment.
I support allowing all unselected applicants being eligible for the second drawing.	Thank you for your comment.
Open pilot hound season Jan. 1 rather than Jan. 5.	Thank you for your comment. The Department recommended a few days between the close of the Dec 1-31 permit season and the start of the pilot cougar season to seal all harvested cougars and update the kill quota prior to the opening day of the dog permit hunt.
I support all recommended changes except please do not shorten the season by one month. Please maintain the Dec. 1 opener for the permit dog hunt.	Thank you for your comment. There is a permit-only cougar hunt without the use of dogs from Dec 1-31. The Department prefers not to have an over-lap between the permit hunts with and without the use of dogs; as such the Department is recommending opening the permit dog hunt Jan. 5. We do not believe that reducing the seasons from 120 days to 90 days will negatively impact our harvest objective.



PROPOSED RULE MAKING

CR-102 (June 2004)

(Implements RCW 34.05.320)
Do NOT use for expedited rule making

Agency: Department of Fish and Wildlife

- Preproposal Statement of Inquiry was filed as WSR 09-06-044; or
- Expedited Rule Making--Proposed notice was filed as WSR _____; or
- Proposal is exempt under RCW 34.05.310(4).

- Original Notice
- Supplemental Notice to WSR _____
- Continuance of WSR _____

Title of rule and other identifying information: (Describe Subject)
WAC 232-28-285 2010 Pilot cougar hunting seasons with the aid of dogs
WAC 220-55-115 Recreational license dealer's fees

Hearing location(s):
Natural Resources Building, Rm 172
1111 Washington Street SE
Olympia, WA 98501
(360) 902-2515

Submit written comments to:
Name: Wildlife Program Commission Meeting Public Comments
Address: 600 Capitol Way North, Olympia WA 98501-1091
e-mail Wildthing@dfw.wa.gov
fax (360) 902-2162

By: Friday, May 15, 2009

Date: June 5-6, 2009 Time: 8:00 am

Assistance for persons with disabilities:

Contact: Susan Yeager by June 4, 2009

TTY (800) 833-6388 or (360) 902-2267

Date of intended adoption: July 10-11, 2009
(Note: This is NOT the effective date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

WAC 232-28-285

The amendment establishes pilot cougar hunting with the aid of dogs for 2010 in Chelan, Okanogan, Ferry, Stevens, Pend Oreille, and Klickitat Counties, plus other Washington counties that meet opt-in requirements from ESHB 2438. The proposed changes to the existing rule include: 1) Allowing anyone to apply for participation in the hunt, not just people that own dogs; 2) Conduct a second drawing (if needed) from all unselected applicants, not just residents of a participating counties; 3) Change permit season to January 5 to March 15, 2010; and 4) Routine calendar date changes. This filing serves as a public notice that other counties may request inclusion in the pilot cougar program up until rule action by the Fish and Wildlife Commission in July 2009. Columbia County has expressed interest in participating in the pilot cougar program, but they have not officially request inclusion in the program at the date of this filing. The anticipated effects of the pilot cougar hunt are stable cougar populations and maintaining the current low level of human-cougar interactions.

WAC 220-55-115

The amendment would allow license dealers to charge \$0.50 for issuing a migratory bird hunting authorizations (including harvest report).

Reasons supporting proposal:

WAC 232-28-285

This change is necessary to implement ESHB 2438 to test the use of dogs to enhance public safety and better manage cougar populations and to maintain sustainable cougar populations while maximizing recreational opportunities and enhancing public safety.

WAC 220-55-115

This change is necessary to add migratory bird hunting authorizations to the list of documents issued by the WILD licensing system. The authorizations are currently issued by agency personnel, and this change will save staff and mailing costs.

Statutory authority for adoption: 77.12.047; 77.12.020; 77.12.570; 77.12.210; 77.12.040; 77.12.010

Statute being implemented: 77.12.047; 77.12.020; 77.12.570; 77.12.210; 77.12.040; 77.12.010

Is rule necessary because of a:

- Federal Law? Yes No
 - Federal Court Decision? Yes No
 - State Court Decision? Yes No
- If yes, CITATION:

DATE
April 22, 2009

NAME
Lori Preuss

SIGNATURE

TITLE
Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: April 22, 2009

TIME: 11:27 AM

WSR 09-09-133

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

None

Name of proponent: (person or organization)

Washington Fish and Wildlife Commission

- Private
- Public
- Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting..... Dave Brittell	Natural Resources Building, Olympia	(306) 902-2504
Implementation.... Dave Brittell	Natural Resources Building, Olympia	(360) 902-2504
Enforcement..... Bruce Bjork	Natural Resources Building, Olympia	(360) 902-2373

Has a small business economic impact statement been prepared under chapter 19.85 RCW?

Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:

Name:
Address:

phone () _____
fax () _____
e-mail _____

No. Explain why no statement was prepared.

These rules regulate recreational hunters and do not directly regulate small business.

Is a cost-benefit analysis required under RCW 34.05.328?

Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name:
Address:

phone () _____
fax () _____
e-mail _____

No: Please explain: Not hydraulics rules.