

## **Concise Explanatory Statement Wildlife Interactions Rules**

### **Rules amended as part of this rulemaking:**

WAC 232-12-142	Special trapping permit – Use of body gripping traps
WAC 232-36-051	Killing of wildlife causing private property damage
WAC 232-36-055	Disposal of wildlife killed for personal safety or for causing private property damage
WAC 232-36-060	Director or his/her designee is empowered to grant wildlife control operator certifications
WAC 232-36-065	Director or his/her designee is empowered to grant wildlife control operator permits to address wildlife interactions
WAC 232-36-100	Payment for commercial crop damage – Limitations
WAC 232-36-110	Application for cash compensation for commercial crop damage – Procedure
WAC 232-36-210	Application for cash compensation for livestock damage or other domestic animal – Procedure
WAC 232-36-300	Public hunting requirements
WAC 232-36-510	Failure to abide by the conditions of permits, provide completed forms, or submit required document or reports

### **Rules repealed as part of this rulemaking:**

WAC 232-12-025	Depredation hunts
WAC 232-28-266	Damage prevention hunts

### **Rules proposed as part of this rulemaking:**

WAC 232-36-054	Use of body-gripping traps and exceptions
WAC 232-36-066	Report required of certified wildlife control operators
WAC 232-36-090	Limitations to managing damage caused big game on private property
WAC 232-36-310	Damage prevention permit hunts: deer, elk, and turkey
WAC 232-36-320	Black bear timber damage depredation permits
WAC 232-36-330	Bear and cougar depredation permit hunts for domestic animal or livestock loss

#### **1. Background/Summary of Project:**

The current rulemaking project was initiated in May 2014. The Department conducted an extensive public involvement process to develop the 2015-2017 hunting season recommendations and game management plan recommendations. In 2014, two online issue scoping surveys were made available to the public. The first survey laid out major issues of concern. The second survey was a follow-up based on the public response received from the first survey. Through these surveys, the Department learned about

significant confusion among stakeholders regarding existing wildlife interaction rules as well as specific inconsistencies between existing rules.

The Department posted draft proposed rules on the WDFW website for two 30-day review and comment periods. The first comment period was prior to the June Fish and Wildlife Commission meeting and the second period was offered during the month of August. The Department also collected public testimony at the June 12-13, 2015 Commission meeting and public hearing and the September 18-19 Commission meeting and hearing. In addition, the Department met with and/or received written input from key stakeholders including the Stillaguamish and Muckleshoot tribes, Washington Farm and Forestry Association, Washington Farm Bureau, Washington Forest Protection Association, Washington Cattlemen's Association, Washington Trapper's Association, Conservation Northwest, Defenders of Wildlife, The Center for Biological Diversity, and other key organizations.

Through these actions, the Department learned about concerns related to wildlife management, protection of property, understanding the resources available to landowners to protect their property or opportunities to be compensated for losses. Additionally, the department learned about significant concerns for landowner, producer, and agency accountability surrounding conflict mitigation measures, and concerns about ensuring wildlife conflict management does not negatively impact endangered species recovery and wildlife conservation in general.

2. **Reasons for rulemaking:**

During 2013, several wildlife conflict responsibilities were transferred from WDFW Law Enforcement to WDFW Wildlife Program. Presently, non-public safety related conflict issues with deer, elk, turkey, bear (timber damage), and wolf are resolved through the Wildlife Program while Enforcement continues to resolve dangerous wildlife conflicts. As a result of this transfer, revisions are needed to the wildlife interaction rules to provide the Department guidance for managing wildlife conflict issues and implementing abatement measures. The proposed revisions are intended to clarify roles, responsibilities, process and requirements for trappers, wildlife control operators, permit holders, hunters, and landowners that participate in activities to assist the Department with minimizing wildlife damage and conflict issues. These amendments will provide agency direction, address frequent questions, and lessen the likelihood for confusion regarding the various permits, licenses, tags, and reporting requirements associated with conflict mitigation.

### 3. Differences between the text of the proposed rule and the rule as adopted:

**General Note:** Minor technical changes were made throughout the proposed rules to adjust grammar and formatting concerns.

#### WAC 232-12-142 Special trapping permits

- Change: Struck the introductory sentence directing applicants to submit a special trapping permit application.

Rationale: The introductory statement was repetitive of subsection (6), which directs a person to complete and submit a department –provided application.

- Change: The definition of body-gripping traps under (1)(a) was modified to define unpadded foot-hold traps and language describing specific falconry traps was removed.

Rationale: Changes retain the definition of a body-gripping trap as defined in RCW 77.15.192 and remove references to falconry traps because they are addressed in subsection (1)(d).

- Change and Rationale: In subsection (1)(c), struck the “in water” definition as it is no longer referenced within the rule.
- Change and Rationale: In subsection (1)(c), inserted a revised definition of “padded jaw-leghold or padded foot-hold trap” for clarification of the terms.
- Change and Rationale: Under (1)(d), language referencing falconry traps was modified to be broader and more inclusive in nature.
- Change: Under subsection (11), added text to clarify that retention of raw fur obtained through the use of a special trapping permit requires a Washington state trapper’s license.

Rationale: This language was added to clarify that the retention rule is specific to special trapping permits.

- Change: In (11) language was revised to clarify possession of a carcass is lawful if accompanied by a transfer authorization as described in WAC 232-12-077.

Rationale: This language allows the trapper to transfer raw fur to another party for personal and educational uses.

- Change: In subsection (15)(a), reinstated "600 Capitol Way North".

Rationale: This language allows for receipt of certified mail from the applicants that request an appeal.

WAC 232-36-051 Killing wildlife causing private property damage

- Change and Rationale: In (2)(b), separated deer and elk damage to crops from black bear and cougar damage to livestock or domestic animals. Deer and elk will be addressed in (2)(b) and black bear and cougar will be addressed in (2)(d).

- Change: In (2)(b), added language requiring a landowner to have attempted non-lethal control techniques in addition to receiving verbal or written approval from the department in order to remove a deer or elk causing damage to crops.

Rationale: Reflects the value that landowners should not resort to lethal removal without having first attempted non-lethal control techniques.

- Change: Language added to (2)(b) to allow an owner to remove one individual deer or elk during the physical act of damaging crops with verbal or written approval from the department within a 12 month period. Language was also added to require notification to the department within 24 hours of the kill.

Rationale: Language regarding verbal or written approval has been added to allow the department an opportunity to take steps to address the conflict issue and work with the owner to minimize wildlife caused damage. Prior approval and notification after kill allows the department to provide the appropriate level of customer service, accountability, and transparency to all interested parties and potentially avoid wastage. Limiting the action to once per calendar year minimizes potential of persistent removal of animals outside of general harvest seasons, damage prevention practices, and other conflict avoidance processes which the department currently utilizes to mitigate wildlife caused damage.

- Change and Rationale: In (2)(b), added the term "commercial" to provide consistency with other rules.

- Change: In (2)(b), added language that directs the department to document animals harvested under this subsection and to ensure that harvest is consistent with herd management objectives when available.

Rationale: This change ensures that animals that are causing damage and are harvested are accounted for in the overall harvest and management of a particular area.

- Change: Created sub-section (2)(d) and moved damage to livestock into the sub-section. Added the word “black” before bear to allow an owner to kill (one) black bear or cougar during the physical act of attacking livestock or domestic animals with or without an agreement or permit. Added language to clarify that one animal could be taken within a 12 month period and that the owner must notify the department within 24 hours of killing an animal.

Rationale: Specifically identifying “bear” as “black bear” provided clarity that the rule does not authorize shooting a grizzly bear. In addition, limiting the action to once per calendar year minimizes potential of persistent removal of animals outside of general harvest seasons, damage prevention practices, and other conflict avoidance processes that the department utilizes to mitigate wildlife caused damage. Notifying the department within 24 hours allows the department an opportunity to document the kill, address disposition of carcass to avoid wastage, and provide accurate information regarding the event when requested by interested parties.

- Change: In subsection (4), removed sentence prohibiting Wildlife Control Operators (WCOs) from killing big game animals.

Rationale: The sentence prior to the deleted sentence indicates that WCOs will be directed under their certifications and permits to assist with abating wildlife-caused damage. At the present time, the department is not permitting WCOs to remove big game animals and does not have a certification course for big game animals. Removing this exclusion will allow the department to regulate WCO participation through their certifications and the permit conditions.

#### WAC 232-36-054 Use of body-gripping traps and exceptions

- Change: Added language under subsection (5) to allow for retention of raw fur for personal use and educational purposes.

Rationale: This addition provides consistency between WAC 232-36-054 and WAC 232-12-142. Many trappers and WCOs utilize the fur of animals for their own personal use as well as for educational opportunities. This change minimizes wastage and allows the trapper or WCO to utilize acquired furs in a non-commercial capacity.

WAC 232-36-055 Disposal of wildlife killed for personal safety or for causing private property damage

- Change: In section (1), added language to clarify that animals killed are disposed of according to RCW 77.15.170.

Rationale: This addition provides a direct reference to the law regulating waste of wildlife and highlights the Commission’s desire to ensure animals harvested using department permits are utilized whenever possible.

- Change: In section (2), removed the statement “may not be retained”.

Rationale: There are times when animals that are causing damage to private property are removed without a permit from the department (e.g., beaver removed by a trapper during trapping season and under a trapping license) and it would otherwise be legal for them to keep the animal. The rule still requires lawful disposal, which is described in subsection (4) of this rule.

WAC 232-36-060 Certification of Wildlife Control Operators

- Change: In subsection (1)(b), struck “Applicants may document the two-year experience requirement by” and replaced it with “Methods of documenting experience include, but are not limited to”.

Rationale: Based on working with stakeholders, this language allows for multiple methods of verifying experience.

- Change: In section (1)(b), changed language so the rule provides examples of how WCO applicants can document the required two years of experience.

Rationale: Provides clarity that the methods are not limited to the few that are listed in rule.

- Change: In (1)(e), strike as written and replace with:

(1)(e) Not have, within the last three years:

(i) More than one finding of paid or committed as a final disposition for an infraction under Chapter 77.15 RCW; or

(ii) A conviction for a fish and wildlife crime under Chapter 77.15 RCW.

Rationale: This language provides clarification on violations that would prohibit certifications. As proposed, the new rule will include felony convictions.

- Change: In section (1)(e), language was changed to allow for one infraction during a three-year period instead of not allowing any infraction over a five year period.

Rationale: Because many infractions are minor violations (e.g., illegally fishing with a barbed hook), not allowing a WCO to have even one was overly-punitive. The timeframe was changed to three years to match the timeframe for which a WCO license is valid.

- Change: In section (3), removed “harassing” and “releasing” from the list of actions and added language to clarify that the permit being referenced in this section is the special trapping permit needed for a body gripping trap (reference: RCW 77.15.194) .

Rationale: Because this section refers to the body-gripping trap special permit, there was no need to include “harassing” or “releasing” as the traps are intended to kill the animal.

WAC 232-36-065 Use of wildlife control operators to address wildlife interactions.

- Change: In subsection (3), added “except for beaver released according to RCW 77.32.585”.

Rationale: Stakeholders asked for clarification that beaver could be released as provided by law.

- Change: In subsection (9)(a), reinstated ”600 Capitol Way North”.

Rationale: This language allows for receipt of certified mail from the applicants that request an appeal.

WAC 232-36-066 Report required of certified wildlife control operators.

- Change and Rationale: Added “knowingly” to the beginning of subsection (4) to align the rule with the language provided in RCW 77.15.270

WAC 232-36-090 Limitation to managing damage caused by big game on private property

- Change and Rationale: Added language under subsection (4)(b) to identify that a written refusal statement must be submitted within 30 days of offer of preventative measures. This provides clarity around the 30 day requirement.

WAC 232-36-100 Payment for commercial crop damage - Limitations

- Change: Added language in (4) to include a department approved checklist of preventative measures as a valid way to qualify for compensation.

Rationale: Allowing a department approved checklist was inadvertently omitted in the previous version. There are occasions when an owner may be impacted but not have an active agreement with the department. The intent is to allow the claimant to utilize one of the three options (i.e. damage prevention agreement, director's waiver, and department approved checklist) and create consistency between 232-36-100, 232-36-110, and 232-36-210.

- Change: Utilized the last sentence from subsection (4) to create a new subsection (5). This is not additional language, but rather a stand-alone bullet point created from existing language. This insertion resulted in subsequent subsections being shifted by one number.

Rationale: This bullet needs to be separated as it references compliance with the agreement versus having an agreement or other form of documentation of preventative measures. Compliance with the damage prevention cooperative agreement conditions that were agreed upon by the owner and the department is important to illustrate the owner has been working with the department.

- Change: Former subsection (14), which is new subsection (15) - Language was added to ensure the department is notified at least 72 hours prior to harvest. Language requiring a WDFW directed adjustor was removed to clarify the owner can utilize any licensed adjustor.

Rationale: This aligns WAC 232-36-100 with WAC 232-36-110 by allowing the owner to select either a department contracted adjustor or one of their own choosing and by allowing the owner to proceed with harvesting if they have notified WDFW within 72 hours prior to harvest. This change provides the department an opportunity to assign an adjustor to assess damage prior to crop harvest.

- Change: Struck former subsection (15), which is new subsection (16), regarding denying claims once funds were expended and replaced it with language found in WAC 232-36-110 which outlines the process that allows the department to maintain a list of claims and pay those in chronologic order once additional funding becomes available.

Rationale: Replacing language in this subsection provides consistency with proposed WAC 232-36-110, which clarifies that claims will roll over, in chronological order, to the next fiscal year when funds are expended for the current fiscal year.

WAC 232-36-110 Application for cash compensation for commercial crop damage – Procedure.

- Change: In (1), language was added to include the department-approved checklist and a Director’s waiver as a valid means of eligibility for compensation.

Rationale: The intent is to provide consistency in rules associated with compensation for losses. Allowing the claimant to submit one of the three options (i.e. damage prevention agreement, Director’s waiver, and department approved checklist) creates consistency between 232-36-100, 232-36-110, and 232-36-210.

WAC 232-36-210 Application for cash compensation for livestock damage or domestic animal – Procedure.

- Change: Inserted the Director’s waiver, in section (10)(e), as part of the acceptable documents, in addition to the department approved checklist or the damage prevention cooperative agreement, required for claims for higher than normal losses.

Rationale: The Director’s waiver allows owners who do not have a damage prevention cooperative agreement or a department approved checklist but have a waiver, signed by the Director, to be eligible to apply for cash compensation for livestock losses. This allows an owner who may not be able to comply with a damage prevention cooperative agreement or a department approved checklist to acquire approval through providing the justification on their waiver and having the Director approve their justification.

WAC232-36-310 Damage prevention permit hunts – Deer, elk, and turkey

- Change: In subsection (3)(e), inserted a new (i) “Season Framework: July 1 – March 31”.

Rationale: The season framework was not identified in the proposal and should be included to clearly define when these actions may occur in GMUs 105-124.

WAC 232-36-320 Black bear timber damage depredation permits

- Change: In section (5)(c), replaced language allowing animals (or their parts) and permit materials to be submitted five days after permit expiration with a seven day requirement.

Rationale: Disposition of the carcass will continue to be designated on the permit and the extended time will allow for animal parts and/or permit materials to be collected and submitted with consideration for landowners and permittees who

often need to coordinate their response and may be working on multiple properties across a large landscape.

- Change: In subsections (5)(c) and (d), deleted “renders” and added “may render” and authorized the department to make that determination.

Rationale: This change makes WAC 323-36-320 consistent with similar sections in WAC 232-36-330. The level of violation may be minor (e.g., turned paperwork into the department in eight days instead of seven) and if so, should not warrant making the permittee ineligible for future permits.

WAC 232-36-330 Black bear and cougar depredation permit hunts for domestic animal or livestock loss

- Change and Rationale: In section (1)(c), replaced “may” with “will” to clarify that department staff need to be in communication with property owners to verify damage before removing an animal.

- Change: In section (4)(a), added language to require biological samples to be submitted within 48 hours of take.

Rationale: This ensures biological information is collected for bear and cougar harvested under a depredation permit.

- Change: In subsection (4)(c), replaced “renders” with “may render” and authorized the department to make that determination.

Rationale: This change makes WAC 323-36-330 consistent with similar sections in WAC 232-36-320 and other sections within WAC 232-36-330. The level of violation may be minor, and if so, should not warrant making the permittee ineligible for future permits.

#### **4. Public comments and WDFW response to comments**

A total of 181 written comments were received during two on-line commenting periods. In addition, formal letters were received from 8 different organizations during the formal commenting period and public testimony was taken during two Fish and Wildlife Commission Meetings (June 13, and September 19, 2015).

WDFW staff worked with several organizations representing both industry and conservation on the development of the proposed changes. These groups included the Washington Trapper’s Association, Washington Farm Bureau, Washington Farm and Forestry Association, Washington Forest Protection Association, Washington Cattlemen’s Association, Conservation Northwest, Defenders of Wildlife, a consortium of conservation

organizations, tribal representation, and others. The final rule changes considered by the Fish and Wildlife Commission reflect significant stakeholder input.

In addition to editorial and process comments, many of the comments received from the organized groups and through the on-line comment process were focused on particular aspects of the rules. There were several comments received through the on-line commenting process that didn't address specific changes proposed under this rule making but were general statements against removal of wildlife causing damage.

### **Summary of Public Comments Received during Official Comment Period and WDFW Response for amended rules:**

#### WAC 232-12-142 Special trapping permit – Use of body gripping traps

The rule changes address concerns about the trapping of non-target species, particularly threatened and endangered species, and whether the department has appropriate permits. Using traps under a special permit is authorized by the director, and staff evaluates risks to non-target species prior to permit approval. Issuance of a permit does not permit take of a listed species. A commenter was concerned that that certain information previously required on the prior permit application, for trapping or scientific research applications, is no longer required. The majority of the information previously required was administrative in nature and having the information in the rule made it difficult for the department to respond promptly to unforeseen issues or concerns. Addressing these issues in policy or through permitting conditions allows the department to be more responsive.

Commenters were concerned that the new rule does not allow multiple renewals if an animal problem persists, conditions of the new permit application are too discretionary, and does not allow a private citizen to retain a trapped animal thus reducing waste. The intent of the new rule is to ensure that conflict issues are addressed in a timely manner and do not encourage a delay or lapse in trapping efforts. Subsequent permits may be requested beyond the initial renewal if the problem persists. The new rule delineates requirements which are relevant to body-gripping traps and allows for retention of raw fur for personal use or education that does not result in retail sale or commerce.

Some commenters were concerned about the new changes allowing the department to deny a permit if information becomes available that otherwise would have led to the denial of the original application and not provide “specific” reasons why a permit was denied or revoked. The rationale behind the rule is that there may be occasions where threatened or endangered species are identified in the area, an applicant's eligibility may change, or new provisions may be adopted and previous permits need to be replaced by new permits. The new rule states that specific reasons for a denial or revocation of a permit will be provided.

To address concerns that a SEPA evaluation was not conducted prior to these new changes and that proposed changes are expansions to existing rules and are in potential conflict with Initiative 713, WDFW completed the State Environmental Policy Act (SEPA) evaluation for the proposed changes. Additionally, the intent of the new rule is to align the rules that directly apply to wildlife conflict issues under the wildlife interaction chapter (WAC 232-36). The department is not expanding authority for use of body-gripping traps through these rules. Though there was a concern from one commenter that the definition for padded foothold traps had been deleted,

however padded foot hold traps are already defined in WAC 232-12-001. A commenter suggested that the department replace the terms “raw fur” and “furbearer” with one consistent term; the new rule uses only the term, “raw fur”. A commenter was concerned with the change of wording from “would result in harm...” to “is likely to result in direct or indirect harm to people or domestic animals”; in response, the new rule reverts back to the original wording, “would”.

WAC 232-36-051 Killing of wildlife causing private property damage

A commenter was is concerned that the state would need Incidental Take Permits (ITPs) from the federal government, along with state and federal permits, to intentionally kill federally listed species. The rule emphasizes the fact that, Federally listed threatened or endangered species will require federal permits or federal authority in additions to a state permit. Certain comments stated that a Damage Prevention Cooperative Agreement (DPCA) should be required before any damaging animal is killed by a landowner, or alternatively that the requirements for having a DCPA prior to issuance of kill or damage permits would hinder a landowner in responding to damage situations. As an acknowledgement that immediate action may be needed, the new rule states if an owner has attempted non-lethal damage control techniques and acquires verbal or written department approval then the owner, owner’s immediate family member, agent of the owner, owner’s documented employee, or licensed hunter/trappers may kill an individual (one) deer or elk, during the physical act of damaging crops. Also an owner may kill an individual (one) bear or cougar during the physical act of attacking livestock or domestic animals with or without an agreement or permit. However, the new rule also states that a DPCA is required before damage prevention or kill tags are issued for multiple animals. A comment stated that the department should be required to enter into DPCAs with landowners to prevent damage, thus negating the need for killing of wildlife or compensation for damage. The intent of this rule is to allow for adequate response to abate wildlife caused damage, but this rule does not reflect what is required for an owner to receive compensation; compensation is covered under separate rules (e.g. 232-36-100, 232-36-110, 232-36-210, etc.). Additionally, a commenter proposed that allowing legal hunting and trapping on property to minimize damage caused indiscriminate killing of animals and is not a science-based approach to reducing damage. However, through the use of licensed hunters and trappers, the department is able to increase human activity in an area and selectively target animals causing damage thus minimizing potential conflicts. A commenter expressed concern that the language, “with the express permission of the private real property owner” is not clear, and that there is confusion between the terms “property owner” and “private real property owner”. The distinction between the property owner and the private real property owner is important wherein the department does not have the authority to authorize killing wildlife on private real property without express permission of the private real property owner. One commenter noted confusion that the proposed wording requires a Wildlife Control Operator (WCO) to adhere to the terms of their certification OR permit; WAC 232-36-060 requires a WCO to have both a certification AND a permit. To clarify, a WCO may assist a landowner under the conditions of their certification or permit and must adhere to those conditions, otherwise they are in violation of their certification or permit; this may result in revocation. Finally, a commenter was concerned that the previous language stated that hunting licenses or tags are not required to kill wildlife under this section, but the new language indicates

they “may be required. In application, there are situations where hunters need a license or tag (e.g., damage prevention permits to address elk damage to crops), and there are others where they are not required (e.g., kill permit issued to a landowner).

WAC 232-36-055 Disposal of wildlife killed for personal safety or for causing private property damage

Commenters were concerned that reporting killed wildlife and disposing of killed wildlife to the department within 24 hours is an unreasonable time frame. Noting that notification can be verbal, or by telephone, message, or email, 24 hours seemed ample time to notify the Department that an animal has been killed. Additionally, the department proposes to allow disposal of wildlife within 24 hours or as soon as feasible, to allow flexibility when necessary. A comment suggested that the phrase “all parts” should be changed to “carcass”, and the language of the new rule remains as drafted because the rule is intended to address disposal in those instances when wildlife is killed in protection of property or public safety therefore all parts of the animal shall be disposed of according to or as instructed under department permit. One commenter questioned the disposal of animals killed in protection of property, suggesting that some species may be used as bait. Again, such animals remain property of the state and shall be disposed of accordingly or as instructed under permit conditions.

WAC 232-36-060 Director or his/her designee is empowered to grant wildlife control operator certifications

The proposed changes address the concerns of comments about the documentation of experience, along with all other required credentials, for obtaining a Wildlife Control Operator (WCO) certification to assist owners to minimize wildlife caused damage to private property. Currently, the exam for both the trapper education course and the wildlife control operator are written exams. The trapper exam does not require a physical interactive component. However, the WCO certification course requires attendance at a 1-day, in person lecture prior to taking the exam. The intent is not to make it more difficult to acquire a WCO certificate but rather to demonstrate that WCOs have a level of experience in addition to successful completion of the certification course. A certified WCO, depending upon the conflict problem they are handling, may be required to acquire additional permits for use of body-gripping traps. One commenter expressed confusion over the use of “kill” and “dispatch”, and the language was removed and additional clarification was provided in the rule. Another commenter was concerned at the language that requires a WCO to be legally eligible to possess a firearm. Because many WCO activities do require dispatching the animal, the individual must be able to carry a firearm. A commenter was concerned about the fee charged for WCO certification. The fee is not for the certification, but rather the department uses the fee to cover expenses associated with offering the course and processing the certification as described under RCW 77.12.184.

WAC 232-36-065 Director or his/her designee is empowered to grant wildlife control operator permits to address wildlife interactions

Some commenters expressed concern that Wildlife Control Operators (WCOs) can utilize body-gripping traps, due to implications for threatened and endangered species. Typical target species (e.g., beaver and mountain beaver) are not generally located in areas where listed species, vulnerable to trapping, occur, especially grizzly bear, lynx, fisher, and wolverine. In addition, department staff evaluates the trapping situation for any potential interaction with listed species and would either not issue the permit or seek advice from the United States Fish and Wildlife Service prior to issuing the permit. Further, we will continue to evaluate the program and any potential future need. A commenter expressed concern that it is wasteful to require the disposal of raw fur when an animal is trapped to prevent property damage. WCOs with a valid Washington state trapping license may retain raw fur of wildlife taken using a special trapping permit for personal use or educational purposes that do not result in retail sale or commerce. The carcass must be disposed of in a lawful manner according to WAC 232-36-055. Some comments objected to the rule that requires a special permit if animals are released or disposed of outside the property boundary where they were captured. The department operates under two mandates which direct the department to protect and enhance fish, wildlife and habitat as well as provide sustainable fish and wildlife related recreational and commercial opportunities. Therefore, managing where and when wildlife is released is an agency responsibility and essential to perpetuating sustainable populations of wildlife. Further, we are requiring landowner consent to make certain we don't authorize a WCO to release wildlife on someone's property without having their permission and agreement to receive the species. In addition, clarification regarding releasing beaver as described in RCW 77.32.585 was added to the final rule. A commenter expressed concern that the use of both "animal" and "wildlife" in the verbiage would cause confusion, and the new rule uses only the term "wildlife". A commenter stated that the reporting requirement is too restrictive and requested the department to send reminder letters to trappers requesting their trapper report. The department is reviewing areas for streamlining and improving the reporting process. However, per RCW 77.15.160 trapping activity must be reported. One commenter expressed concern regarding the potential revocation of permits and wildlife control operator certifications for violation of a fish and wildlife law. The final rule provides a wildlife control operator a mechanism to resolve issues associated with revocation or denial of permits and/or certification.

#### WAC 232-36-100 Payment for commercial crop damage – Limitations

Comments received address concerns that landowners may be required to complete additional documentation in order to make claims if the owner has denied prevention measures offered. The department revised language which defines the documentation of prevention measures through a damage prevention cooperative agreement, a department approved checklist, or a waiver from the director prior to making damage claims. In addition, the rule defines that prevention measures are legal, practical, and industry recognized as effective. One commenter expressed concerns that requiring hunter access on private lands negatively impacts landowners' ability to market access on their land. Currently, the damage prevention cooperative agreements contain requirements for lands receiving damage to be open to public hunting. This requirement is intended to ensure the landowner is using hunting as a tool in addition to depredation permits and non-lethal actions to minimize damage prior to claiming damage. The department offers several programs and methods to work with landowners to provide public hunting opportunities

for minimizing damage, including Feel Free to Hunt, Hunt by Written Permission, Register to Hunt, the Hunt by Reservation system, and Master Hunters. Department staff works closely with landowners to choose an approach that fits their land and the damage issue best. The rule also clearly states that hunting access is required on parcels that are being damaged and not all property owned by the landowner.

WAC 232-36-110 Application for cash compensation for commercial crop damage – Procedure

A commenter noted that placing the requirement on landowners to provide records documenting the average yield for the crop loss for three previous years may not be possible due to rotation of crops, leaving fields fallow and that a quality estimate for the current year should suffice for that years claim. WDFW agrees that this may cause some issues and the final rule does not include the requirement for the three years of documentation. This proposed change also addresses minor language changes and serves only to clarify the documentation required to be submitted when making claims and does not affect the process or requirements.

WAC 232-36-210 Application for cash compensation for livestock damage or other domestic animal – Procedure

Comments received expressed concerns about the type of prevention measures. The final rule provides clarification about the requirement for legal, practical, and widely accepted prevention measures being implemented and documented and provides for a waiver for non-implementation that can be approved by the director prior to making claims. The intent of the waiver is to provide producers with an opportunity to explain why they are not attempting the measures recommended by the department. Commenters requested clarification that the checklist or damage prevention cooperative agreements were part of the claims package; the request was honored. Commenters expressed concern over the separation of wolves from livestock depredations caused by other carnivores. Maintaining the separation of claims for losses caused by wolves reflects a policy decision, based on efforts of stakeholders involved with developing the Wolf Conservation and Management Plan, to provide additional compensation to further facilitate species recovery while building social tolerance. This change also clarifies the requirements and process of claims for above-normal losses as well as the process for appeals of compensation settlement offers by an independent review panel, based upon existing rule requirements of WAC 232-36-400.

WAC 232-36-300 Public hunting requirements

Commenters report concerns that landowners may not have the ability to independently choose hunters or allow public hunting on their lands. The intent of this cooperative work is to illustrate the collaboration between the landowner and the department in providing public hunting through an agreement. No further restrictions or limitations are imposed on the landowner as they work collaboratively to determine their best means of mitigating damage with the use of hunters. Language in the rule explicitly states the intent is to allow hunting at an appropriate time, manner, and level to help prevent property damage; unless the department determines that hunting is not practical for the area.

WAC 232-36-510 Failure to abide by the conditions of permits, provide completed forms, or submit required document or reports

Only a few comments were received all stating that submission of all documents should be required and that penalties should be enforced. One commenter requested a significant fine or imprisonment. Penalties are outlined in the rule that range from an infraction to misdemeanor subject to prosecution under RCW 9A.76.175 or 40.16.030.

**Summary of Public Comments Received during Official Comment Period and WDFW Response for repealed rules:**

WAC 232-12-025 Depredation hunts

Comments received were in support of repeal. However, most commenters do not support hunts in response to wildlife caused damage. Also, commenters were concerned that WDFW was not required to verify damage. WDFW removed this rule and replaced with proposed rule 232-36-320. WDFW wrote within the new rule that verification will occur. The rule is necessary as permits a tool to mitigate damage. Permits are provided to landowners that have worked cooperatively with the department on non-lethal measures and continue to experience property damage.

WAC 232-28-266 Damage prevention hunts

Comments received were in support of repeal. However, most commenters do not support hunts in response to wildlife caused damage. WDFW removed this rule and replaced with proposed rule 232-36-310. Commenters expressed concern that this rule provides free hunting when wildlife caused damage is a cost of doing business. The rule states WDFW provides permits to landowners that have worked cooperatively with the department on non-lethal measures and continue to experience property damage. Permits are an option that helps to mitigate damage and manage wildlife populations. One commenter wanted night-time hunts. Due to safety concerns WDFW does not support night-time hunts by recreational hunters.

**Summary of Public Comments Received during Official Comment Period and WDFW Response for proposed rules:**

WAC 232-36-054 Use of body-gripping traps and exceptions

Comments received included concerns that body-gripping traps were inhumane and that non-lethal methods must be implemented prior to use of body-gripping traps. This provision is specifically excepted in RCW 77.15.194 (4)(a). The department recognizes the need for a variety of tools to be utilized under varying conditions and scenarios. Some of which may not be conducive to dispatching a firearm therefore the rule has been written to allow for the use of these tools under a director authorized permit. The current application for use of body-gripping traps requires the applicant to identify and affirm the non-lethal actions taken as well as affirm the non-lethal measures have proven to be ineffective. Also, the department does not allow for the use of body-gripping traps to capture listed species unless the permittee is acting as an agent

of the state and is directed, permitted, and authorized by the department and by the USFWS for specific action. The department received mixed comments on the checking and reporting time frames, some commenters were in support of the traps being checked every 24 hours and others suggested 48 hours for non-body-gripping traps. The 24 hour trap check is in accordance with RCW 77.15.194 for body-gripping traps and remains in the rule for non-body gripping traps to allow for consistency and humane treatment of captured animals.

WAC 232-36-066 Report required of certified wildlife control operators

Commenters were supportive of a reporting requirement for wildlife control operators. Commenters noted that the failure to report and reporting false information resulted in the same penalty which was stated as an infraction; however, commenters suggested the penalty should be a misdemeanor. The department agreed per RCW 77.15.270 knowingly providing false or misleading information is considered a misdemeanor. However, per RCW 77.15.160 failure to report is considered an infraction and therefore remains as such in the proposed rule. One commenter opposed trapping, requested all wildlife control operator activity be available to the public, and requested non-compliance be felony with a fine and revocation of certification. Currently, reporting of trapping activity is required by RCW 77.15.160 and WAC 232-12-134. The report form for wildlife control operator activity requires specific information on location, species, and numbers of animals harvested. As mentioned above failure to report or knowingly reporting false information will result in a punishable action.

WAC 232-36-090 Limitations to managing damage caused big game on private property

Commenters requested that eligibility provisions for compensation related to damage caused by big game should be consistent across WACs, including but not limited to damage caused by wolves, cougars, and black bears. Additionally, a request to identify how damage is confirmed was stated. The department agreed and included provisions which allow for a department approved checklist, a damage prevention agreement, or a director approved waiver to affirm compliance with necessary terms for compensation. Additional comments received indicated clarification was necessary to identify if this rule only applies to guard dogs or guard dogs and other domestic animals. The department agreed and revised the rule language to include reference to WAC 232-36-051; which includes livestock or domestic animal. Both livestock and domestic animal are defined in WAC 232-36-030. One commenter suggested that wildlife control officers be given the ability to assist landowners; which the department interpreted as referring to wildlife control operators. WDFW will continue to monitor and evaluate if further expansion of the wildlife control operator program would be beneficial for WDFW to address wildlife conflict issues.

WAC 232-36-310 Damage prevention permit hunts: deer, elk, and turkey

Several commenters do not support hunts in response to wildlife caused damage. Commenters expressed concern that this rule provides free hunting when wildlife caused damage is a cost of doing business. However, the rule states permits may be provided to landowners that have worked cooperatively with the department on non-lethal measures and continue to experience

property damage. Permits are an option that helps to mitigate damage and manage wildlife populations. Additional comments were received that expressed concern that a landowner must sustain property damage caused by deer, elk, or turkey before they can sign a damage prevention agreement. The intent was not to preclude owners the right to protect their property rather to enable them additional opportunities to minimize wildlife caused damage. Therefore, WDFW proposed new language will allow for a landowner to enter into an agreement to prevent damage from deer, elk, or turkey. A comment was received indicating the quota proposed for elk in GMU 400 was too low and that producers in these areas should be provided more opportunities to remove elk. WDFW will monitor needs for all areas and if additional action is required, the department will utilize additional kill authority and or due process through the Commission. One commenter expressed concern that a requirement was being imposed that negates a hunter's opportunity to participate in damage prevention hunts. Currently, one damage tag is authorized per hunter. Language was added to 232-36-310(1) stating this does not preclude a landowner from using a kill permit or from protecting their property. Hunters are currently limited to a maximum of (2) elk per hunter during the license year for any combination of seasons, tags, and permits authorized by the Commission (per WAC 232-28-358) and (1) deer per hunter (except for holders of second deer special permits and tags; per WAC 232-28-357), therefore the damage tag would offer a second opportunity to hunters separate of their general season tag or second deer special permit.

#### WAC 232-36-320 Black bear timber damage depredation permits

Commenters were concerned that verification of damage was not occurring. Therefore language was proposed to expressly state the department will verify reported damage. Additional comments were received questioning what criteria are used to constitute evidence of damage. The department defines commercial timber damage and as part of the application for a depredation permit, landowners are required to submit photographic evidence along with GPS coordinates for the damage location. A recommendation was presented to extend the required reporting time frame from 5 days to 7 days. WDFW agreed and made the adjustment to the rule. Comments were received requesting consideration of carcass retention by hunters that assist landowners under a black bear timber damage depredation permit. WDFW recognized there may be other measures that will improve the current bear timber damage process and are taking recommendations such as the one mentioned here, into consideration. Therefore, language was changed to read that all harvested bears must be disposed of as conditioned on the permit. This revision provides flexibility for the department to address carcass disposal as needed through policy revision.

#### WAC 232-36-330 Bear and cougar depredation permit hunts for domestic animal or livestock loss

Commenters were concerned that WDFW was not required to verify damage; however, WDFW does require verification of damage. Confirmation and determination of damage is and will be conducted by the department staff. Questions and concerns were raised regarding WDFW's

current cougar population management objectives, a need for confirmation of damage, who would conduct the confirmation of damage, and who would authorize hunters. While the department does not identify a numerical cougar population objective, several cougar management goals and objectives were identified in the current Game Management Plan July 2015 – June 2017; Objectives 90-96. The department will work with the affected landowner and designate the hunter that may utilize a depredation permit. An additional comment was received and adjustments made requesting that biological samples required on the permits be submitted and carcass disposition must occur within 48 hours as conditioned on the permit. One commenter expressed concern that published scientific research demonstrating removal of bears or cougars for conflict increases conflict were being disregarded. The proposed rule is intended to identify the requirements for which bear or cougar may be removed in response to domestic animal or livestock loss. Each incident is addressed on a case-by-case basis and preventative measures (e.g. fencing, caging, etc.) are documented and or recommended for deployment. The department assesses each scenario and utilizes tools and techniques that are practical and recognized by the profession as acceptable measures. Selective removal and removal of problem individuals has merit among the scientific and wildlife community; particularly when removing repeat offenders. There are a number of peer-reviewed publications that demonstrate this information. Additionally, remaining individuals may gain an advantage through learned behavior and pass on learned or genetic human-avoidance to subsequent future generations.