

Concise Explanatory Statement (CES)

Concise Explanatory Statement for WAC 220-412-130 Nonlethal pursuit training pass program

Rules amended as part of this rulemaking:

None

Rules repealed as part of this rulemaking:

None

Rules created as part of this rulemaking:

WAC 220-412-130 -- Nonlethal pursuit training pass program

1. Background and Summary of the Project:

In 2019, the Washington Legislature passed House Bill 1516 (2019 c 226 § 2), which directed that the Fish and Wildlife Commission (“Commission”) shall adopt a process and criteria to select who may act as agents of the Washington Department of Fish and Wildlife (“Department” or “WDFW”) in nonlethal dog pursuit of black bears, cougars, or bobcats in order to protect livestock, domestic animals, private property, or the public safety.

The Legislature further directed the Commission to create and administer a training program for those selected to train their dogs consistent with this use and to provide for training opportunities using nonlethal pursuit (2019 c 226 §1.) The bill explicitly stated that nothing in it may be construed to prohibit nonlethal pursuit training of dogs by persons selected to be available through the process established as described above to be possible agents of the Department.

By way of background, the Department has authority under RCWs 77.15.240 and 77.15.245 to authorize dog handlers to assist in both public safety incidents and cases of property depredation caused by dangerous wildlife. The Department exercises this authority when needed, and when directed by the Department,

private dog handlers have acted in the capacity of the Department's agents to protect the public's safety and personal property. Department officers across the state frequently call upon dog handlers to assist in locating dangerous wildlife. An ongoing challenge for dog handlers, however, has been maintaining a necessary level of training and readiness for their dogs between calls for service. This is because a dog handler has previously been prohibited from engaging in training exercises with their dogs because of possible violations of RCW 77.15.245(2).

The Legislature sought to address this challenge by ensuring that well-trained dogs are available and ready for the Department's periodic calls for service. The adopted rule implements this mandate.

The program created by this new rule will be monitored and administered entirely by the Department's Enforcement Program and will permit a certain number of individuals to be selected as dog handlers to participate in the Department managed nonlethal pursuit training program following extensive background checks and compliance with agency requirements.

The new rule emphasizes safe, ethical, responsible, and lawful dog-handling practices as well as detection of specific wildlife species by dogs, all under close time place and manner oversight by the Department. This is accomplished through the creation of the nonlethal pursuit training pass program, intended to improve relations between dog handlers and the Department, provide effective detection of target species when requested by the Department, and promote the ethical treatment of working dogs and wildlife.

2. Reasons for adopting the rule:

Over the years, both Department officers and Department wildlife conflict specialists have been called on to address dangerous wildlife conflict situations involving a variety of wildlife species. These confrontations with wildlife involve both public safety and property protection. Cougars are solitary and secretive animals that are rarely seen in the wild. The Department uses dog handlers because certain breeds of dog, such as scent hounds, sight hounds, and lurchers, are physically and inherently skilled at locating predators such as cougars. When trained correctly, their keen sense of smell and tracking ability can efficiently "tree" large animals. Because Washington's human population continues to grow, the Department and members of the Legislature expect that calls for service from

dog handlers will likely increase in the years to come. The Department is addressing this likely increase through this rule making.

Adoption of this new rule, as mandated by the Legislature, will lawfully allow these specialized dogs to be properly trained *in the Washington*, and therefore be prepared, effective, and safe when called upon by Department officers or wildlife conflict specialists to maintain public safety by pursuing and locating dangerous wildlife. Only working dog handlers who apply to the Department and satisfy the screening requirements, will lawfully be able to train in the state, and only in accordance with the rule.

2.1 Consequences of not adopting the rule

Failure to adopt this rule may impact public safety. Without an in-state training program for dogs and dog-handlers under close oversight by the Department, the number of well-trained pursuit dogs will likely dwindle, leaving either poorly-trained dogs and dog-handlers available to the Department when needed, or fewer dogs and dog handlers. Furthermore, by not adopting the rule, the Commission will fail to comply with the Legislature’s mandate, codified in RCW 77.12.077.

3. Differences between the text of the proposed rule (CR 102) and the rule as adopted:

Based on public comment, Department staff made several changes to the proposed rule. Those changes were considered and adopted by the Commission at a public hearing on January 29th 2021. These changes include the following:

- (a) An additional section—subsection (4)—proscribes what shall occur following the discharge of a firearm during a training session: “If a firearm is discharged at any point during a training activity, the training pass granted pursuant to subsection (11) shall be placed on hold until reinstated by the Department Captain or training area Sergeant. Before a training pass may be reinstated or reissued, WDFW Police shall investigate the circumstances of the discharge to determine if it was unlawful or a result of not meeting the best practices of dog handling.”

This change clarified how the training pass holder will be temporarily unable to engage in any training opportunities until WDFW Police conducts an investigation and determines why the firearm was discharged. This language and protocol were originally included in the affidavit of conduct that any participant would be required to read, sign, and abide by. But, the Commission wished to emphasize the protocol following a firearm discharge by including it in the rule, rather than only in the affidavit.

- (b) An additional section—subsection (5)—addresses requirements for a participant who purchases a cougar tag: “A Nonlethal Pursuit Training Pass Program participant who purchases a cougar harvest tag in Washington State cannot fill a cougar tag 72 hours before or after a training exercise.”

This addition mitigates a concern that a training pass holder will utilize the program to enhance their personal cougar hunting opportunities by seeking out cougar as part of a dog-handling exercise, then returning to the location without dogs to hunt. The nonlethal pursuit training program is not intended to aid recreational hunting in any way. The added requirements are consistent with the 72-hour cougar harvest reporting process, which requires the hunter to report their cougar harvest within 72 hours.

- (c) The addition of geographic limitations of training passes—subsection (10): “Training passes issued by the Department for training activities shall be geographically limited to no more than nine training passes at a time per WDFW Region, and no more than three training passes at a time per enforcement detachment.”

This addition responded to public testimony expressing concerns that the program would concentrate training pass holders and training activities in certain areas of the state. The Department considered the public concerns and suggested the addition, recognizing that a concentration of training pass activities could overwhelm enforcement staff in those areas approving and overseeing trainings. Further, the recommended change embraces the need to disperse working dog handlers statewide and have dog handlers familiar with the variety of regions in Washington, as the Department’s

need for working dog handlers occurs statewide. The approved language in the rule provides an “up to” number to generate a ceiling or cap per region and detachment. This should spread training activity more evenly across the state and improve the quality of oversight by Department staff.

- (d) The addition of restriction of training passes for certain GMUs—subsection (11): “The Department Captain shall restrict training pass scope for certain Game Management Units (GMU’s) during big game hunting seasons when prudent.”

This change gives the Department discretion to limit the scope of training pass activities in certain GMU’s during big game hunting seasons, a concern raised by some public comments and Commissioners. Specifically, this change addresses concerns that recreational hunting and training pass activities could overlap and prove not to be compatible. With this discretion and flexibility, the Department can use adaptive communication and management to generate an active balance between these different uses—hunting, and nonlethal pursuit training—and maintain that balance and public safety during these seasons and in these locations.

- (e) The additional requirement that training pass participant carry pepper spray or an air horn—subsection (12):
“Any training pass holder engaged in training activities is required to carry either pepper spray or an air horn so that nonlethal means are available to mitigate wildlife interactions.”

The nonlethal pursuit training pass program is nonlethal and prioritizes the ethical treatment of working dogs and wildlife. Training pass holders may not kill or injure domestic or wild animals while engaged in the training activity, unless necessary for self-defense. There are inherent risks in wildland activities involving big game and wildlife, and therefore a need for personal protection—public comments and the Commission recognize this. This addition does not just encourage, but requires effective nonlethal tools be available to any program participant for their protection in the case of wildlife interactions with working dogs during the training.

- (f) An additional section—subsection (14)—prohibiting a training pass holder from pursuing kittens or cougars with kittens:

“As a best practices in dog handling, training pass holders shall not knowingly engage in the pursuit of spotted kittens or cougars with spotted kittens. Upon any observation of tracks of more than one cougar or visually observing the presence of spotted kittens during a training exercise, the handler shall terminate the current training pass activity and report the observations to the training area Sergeant. The Sergeant may choose to subsequently limit future training activities in the area.”

This change addresses public comments that a nonlethal pursuit training activity could lead to injury or death to juvenile cougar (kittens). Avoiding pursuit of cougar kittens, or cougars raising juveniles, is a best practice among dog handlers, but this language explicitly adopts that best practice as a prohibition. The prohibition requires dog handlers to be aware of visual clues or tracks indicating the presence of kittens with an adult cougar; if there are indications of kittens, the dog handler shall not engage in a training pursuit. This language further defines the responsibility the handler will take if kittens are located and reporting requirements to the agency.

4. Rulemaking Chronology

- April 30, 2019—Governor Inslee signed HB 1516 into law. Chapter 226, 2019 Laws. The law took effect July 28, 2019.
- July 18, 2019—First Working Group Sub-Committee Meeting¹ following the signing of HB 1516. The initial draft of the proposed rule focused on the enrollment section and approved the pre-proposal for filing.
- August 7, 2019—Filed rule pre-proposal (CR-101) with Office of the Code Reviser. [The CR 101](#) appeared in WSR 19-16 published on August 21, 2019. It is available at https://wdfw.wa.gov/sites/default/files/2019-08/wsr_19-16-150.pdf

¹ The Sub-Committee consisted of these member organizations: Conservation Northwest; Humane Society of the US; WA Cattlemen's Association; Mountain Lion Foundation Board Member; Stevens County Commission; Western Wildlife Outreach; Working Dogs for Wildlife Conflict; Hunters Heritage Council; At-large Cougar Enthusiasts; and WDFW Enforcement and Wildlife Program

- September 3, 2019—Second Working Group Sub-Committee Meeting. The bulk of the effort focused on the enrollment portion and training portion of the proposed rule.
- December 4, 2019—Third Working Group Sub-Committee Meeting. This effort focused on fine-tuning the proposed language to a finished rule, and building consensus among stakeholders.
- October 15, 2020—Filed rule proposal (CR-102) with the Office of the Code Reviser. The CR 102 appeared in WSR 20-21, published on November 4, 2020. It is available at https://wdfw.wa.gov/sites/default/files/about/regulations/filings/2020/wsr_20-21-065.pdf. The posted public comment period remained opened through December 7, 2020. The rule-making hearing was listed as December 18, 2020.
- December 4, 2020—The Fish and Wildlife Commission held a public hearing (not a rule-making hearing) and staff presented the proposed rules, including a summary of public testimony received to date. Public Testimony was accepted.
- January 29, 2021—The Commission voted to adopt the proposed rule, with recommended additions (described above).

The Department emailed state agencies and key stakeholders on October 21st, 2020 to inform them that the proposed rule had been filed with the Office of the Code Reviser. The email advised of upcoming hearings and encouraged public comment, saying, in part:

Good morning,

I am excited to share that the Code Reviser published the CR-102 for the Nonlethal Pursuit WAC language. The public hearing will take place December 3-5th via an online webinar. Once I have a finalized hearing schedule, I will share the exact date and time that it will be heard. Public comment can be emailed or mailed to me before the Commission meeting and testimony will be heard at the Commission meeting during the hearing time in December. Any written or “in person” comments would be greatly appreciated and sincerely welcomed!

I want to thank you for your involvement in drafting this language and for providing valuable and informative information to see this project come to fruition.

Related rule making documents were posted on the Department’s Rule Making web page to advise the public of the rule making activity. The CR 101 and

invitation to participate appeared during much of 2019 and 2020 in the “Preproposal” section. Soon after filing of the CR 102 with the Office of the Code Reviser copies of the proposed rule language, the CR-102, and information about meetings and how to provide public comment were moved to the “Pending rule-making” section. The Department provided an email address and postal address to which comments could be sent.

5. Public comments, response to comments, and consideration of comments:

The Department received a large number of written comments, summarized in the table below. The table includes comments received before and after the comment period deadline of December 7, 2020². The Fish and Wildlife Commission received comments which were considered even though they were late after December 7th, 2020. These comments were not included in the count of public comment received in subsequent staff presentations as they were delivered outside the defined public comment period.

Summary of Public Comments Received		
Total Responses Received During Open Public Comment Period (October 20 th , 2020 – December 7 th , 2020)	268	
In support	207	77.2%
Not In support	51	19.0%
Other	10	3.7%
Oral Public Testimony Received During the Open Public Hearing December 4 th , 2020 Commission Meeting	23	
In support	9	39.1%
Not in support	12	52.2%
Other	2	8.7%
Letters and Emails Submitted After December 7 th Open Public Comment Period (December 8 th , 2020 – January 29 th , 2021)	55	
In support	34	61.8%
Not In support	17	30.9%
Other	4	7.3%
Total Responses Received	323	
In support	241	74.6%

² Late-submitted comments received on or after January 28th, 2021 were not considered by WDFW staff in final presentation or Fish and Wildlife Commission prior to vote.

Not In support	68	21.1%
Other	14	4.3%

The following is a summary of comments received during the formal comment period and the Department responses to those comments. Comments are separated into three categories—rule specific comments, comments not specific to the rule, and comments provided at the public hearing.

Appendix A is a compilation of individuals and organizations who submitted formal letters with their comments. Appendix B contains a sample of form letters received in opposition to the rule. The Department did not receive any form letter in support of the rule.

Comments Specific to the Rule

The Department received a total of 268 comments during the open public comment period regarding specific subsections of the proposed rules. It should be noted that some comments varied widely. Individuals expressed concerns that the rule would allow or encourage hunting with the use of dogs. Others expressed their distress over some county sheriffs hunting down cougars or seeming to abuse the public safety exception in RCW 77.15.245(2)(a). Others proposed the Commission change recreational hunting seasons to accommodate the program.

Comment:

One commenter requested that the Department refrain from adopting the proposed rule or hold off on rulemaking pending a court decision on the validity of HB 1516.

WDFW Response:

This rulemaking is timely for the reasons set forth in Section 1 of this Concise Explanatory Statement. The Department presumes the constitutionality of HB 1516 and respectfully disagrees that it lacks statutory authority to address needed rules, given the passage of HB 1516. If the statute is found to be unconstitutional, the Department will revise or repeal rules accordingly.

How the final rule reflects this comment:

No change to the rule proposal is made as a result of this comment because the comment address policy concerns that are outside the scope of the proposed rules.

Comment:

Some commenters requested that the Department re-legalize or decriminalize hound hunting instead of adopting this rule.

WDFW Response:

Under RCW 77.15.245(2), it is unlawful to recreationally hunt with the aid of dog for cougar, black bear, or bobcat. RCW 77.15.245(2)(a) retains the lawful use of dogs by employees or agents of county, state, or federal agencies while acting in their official capacities for the purpose of protecting livestock, domestic animals, private property, or the public safety. This statute is product of the will of the people, who passed Initiative 655 in 1996. The request to decriminalize hunting with the aid of dogs is outside the scope of this rule making as it would require an amendment to RCW 77.15.245.

How the final rule reflects this comment:

The rule is consistent with the direction provided by the Legislature in 2019 and does not exceed the authority from the Legislature by addressing or allowing for any alternative use of dogs.

Topical Comments Not Specific to the Rule

Many comments expressed views or encouraged the Commission to take policy actions that were not specific to the text of the rule, but addressed the topic of cougar hunting or cougar management generally. Some of these comments focused on the impact the rule may have on cougars. These comments are grouped by topic below.

Comment:

A number of commenters expressed a general concern that cougars will be killed or injured if the rule is implemented.

WDFW Response:

As stated in the name of this program, the title of the proposed rule, and in RCW 77.12.077, this program is nonlethal to cougars; it prioritizes the ethical treatment of working dogs and wildlife. The purpose of this program is to provide dog training opportunities using nonlethal pursuit. The purpose of training dogs is to condition them to detect the scent of certain wildlife, train their behavior when the dog handler directs the dogs to follow the scent, train the dogs to abide by the handler's orders to cease pursuit and back off when a cougar is found and "treed," and to train the handler in best practices for conducting a nonlethal pursuit. The training exercise does not end with a physical confrontation with the wildlife, or the lethal removal of the animal. The better trained the dogs and dog handlers, the less likely a nonlethal pursuit will result in a physical confrontation with the pursued wildlife.

However, there is always a possibility that a nonlethal pursuit of wildlife could turn into a more dangerous situation for the dogs, dog handlers, or wildlife. Recognizing this possibility, Department staff drafted and recommended additional subsections to the rule to require nonlethal options for those engaged in this training program. This way, if a pursuit does lead to an unexpected confrontation with the wildlife, the person has nonlethal options for protection, which also protects the wildlife.

The additional language promoted in part by these comments is as follows: "Any training pass holder engaged in training activities is required to carry either pepper spray or an air horn so that nonlethal means are available to mitigate wildlife interactions".

Additionally, a second recommended addition to the rule is intended to discourage a person from exercising a lethal protection option against wildlife. The mandatory reporting of any discharge of a firearm in the original rule proposal is paired with a description of next-steps following the discharge of a firearm, including a hold of any training passes and an inquiry by WDFW Police. The additional firearm language added, due in part by this comment, is as follows: "If a firearm is discharged at any point during a training activity, the training pass granted pursuant to subsection (11) shall be placed on hold until reinstated by the Department Captain or training area Sergeant. Before a training pass may be reinstated or reissued, WDFW Police shall investigate the circumstances of the

discharge to determine if it was unlawful or a result of not meeting the best practices of dog handling.”

If a firearm is discharged during a training exercise, the training pass holder is automatically put on hold while WDFW Police conducts an investigation. The language discretion that if the investigation by WDFW Police finds that best practices were not followed, which could include poor dog handling leading to a physical dog/cougar conflict, or poor decisions that led to the need to use a firearm against a cougar for protection, the training pass may not be reinstated. Much of this language was originally included in an Affidavit that any program participant would be required to read, agree to and abide by, and the addition of this provision in the rule is meant, in part, to elevate and highlight best practices, and discourage firearm use or actions that may lead to such a situation.

Comment:

Some commenters questioned the need for the rule and provided general opposition to the use of dogs for both hunting and the nonlethal pursuit of cougars.

WDFW Response:

Working dogs and their handlers have proven to be a valuable tool that helps WDFW Police and the Department’s wildlife conflict staff respond to dangerous wildlife incidents to preserve public’s safety. These include instances of wildlife, such as cougar or bear, encroaching into residential areas, where domestic animals, livestock, and in rare instances people, can be preyed upon. When steps such as eliminating an attractant, or putting up equipment or devices to discourage the wildlife are not effective or not practical, the appropriate response may be tracking the wildlife and directly capturing or killing it. These decisions are situation specific and made by trained Department officers and wildlife conflict specialists. In these situations, dog handlers act as agents of the department to assist in tracking or pursuing dangerous wildlife.

The Legislature recognized that the lack of opportunities in the state for dog handlers to keep dogs trained and best prepared between calls for service was a problem. In response, it passed HB 1516 and directed the Commission to promulgate rules to ensure that working dogs and dog handlers have adequate

instate training opportunities, thus ensuring well-trained dogs available to the Department when needed. This program is not a recreational opportunity and the Legislature indicated that the Department will administer and oversee the nonlethal pursuit training program. These rules provide strict requirements on who can participate and direct how the program will be closely monitored and administered through the enforcement program, such that serious and professional dog handlers are likely to be primary participants.

How the final rule reflects this comment:

The rule is consistent with the purpose of the HB 1516 and accurately reflects the intent of the Legislature. The rule does not expand the use of working dogs beyond that intended by the Legislature.

Comment:

Several commenters expressed concern that the rule would have the negative impacts to cougar kittens.

WDFW Response:

Concerns for the health and well-being of juvenile cougars (kittens) was a common topic in both the written and public testimony. The Department appreciates this concern. Pursuit of juvenile cougar, or adult cougars who are with kittens, is frowned upon by those in the working dog community, and the Department agrees it should not occur. Staff therefore drafted additional language for the rule to make clear and explicit the requirements on the topic—“As a best practices in dog handling, training pass holders shall not knowingly engage in the pursuit of spotted kittens or cougars with spotted kittens. Upon any observation of tracks of more than one cougar or visually observing the presence of spotted kittens during a training exercise, the handler shall terminate the current training pass activity and report the observations to the training area Sergeant. The Sergeant may choose to subsequently limit future training activities in the area.” See subsection (14).

This language was added in response to the concerns provided during public comment. This language announces and embraces best practices in dog handling, that handlers will not engage in pursuit if visual or track confirmation indicates the presence of kittens, and mandates that the practice be followed. This

language further defines what the handler is to do if kittens are located and requires reporting to the agency. These provisions will prevent the pursuit of juvenile cougars or adults with kittens, thus protecting them from distress or any risks from a pursuit.

How the final rule reflects this comment:

The drafting of the rule and rule language seeks to safeguard and protect not only wildlife like cougars, but also their kittens.

Comment:

A large number of comments came in the form of a form letter that suggests the rule circumvents RCW 77.15.245(2), which makes it a criminal offense to hunt or pursue cougar with the aid of dogs in some circumstances.

WDFW Response:

RCW 77.15.245(2) states that “Notwithstanding RCW 77.12.240, 77.36.030, or any other provisions of law, it is unlawful to hunt or pursue black bear, cougar, or bobcat with the aid of a dog or dogs.” Subsection (a), which follows, reserves from the prohibition the use of dogs in specific instances, reading “Nothing in this subsection shall be construed to prohibit the hunting of black bear, cougar, or bobcat with the aid of a dog or dogs *by employees or agents of county, state, or federal agencies while acting in their official capacities* for the purpose of *protecting livestock, domestic animals, private property, or the public safety.*” (emphasis added).

Subsection(d) reserves from the prohibition the activities encompassed by this rule, stating “Nothing in this subsection may be construed to prohibit nonlethal pursuit training of dogs by persons selected *through the process established in RCW 77.12.077* for future use for the purpose of protecting livestock, domestic animals, private property, or the public safety.” (emphasis added).

The Legislature, in passing HB 1516, codified in RCW 77.12.077 and amending 77.15.245 to include the subsection (d) quoted above, explicitly permitted the use of dogs in a nonlethal pursuit training program created and managed by the Department for the purpose of training dogs and their handlers for future use for the purposes included in subsection (b), quoted above. The nonlethal pursuit

training program created by this proposed rule explicitly serves the purpose of RCWs 77.12.077 and 77.15.245(2)(b). The rule does not create a recreational opportunity and will be closely monitored and administered through the Department's enforcement program. The intent of this rule is to ensure that working dogs are available during calls for service and that the dogs used are trained for quick and skilled action. This does not allow for the killing of cougars, or provide recreational hunting as defined by RCW 77.15.245(2). It does not circumvent the prohibition on the use of dogs for hunting and does not exceed the Legislature's intent.

How the final rule reflects this comment:

No change to the rule proposal is made as a result of this comment because the comment address policy concerns that are outside the scope of the proposed rules.

Comment:

Some commenters expressed that this rule may lead to misuse of working dogs and their handlers by other law enforcement entities, such as county sheriff's, to pursue and lethally remove cougars.

WDFW Response:

As directed by RCW 77.12.077(2), the nonlethal pursuit training program is a creation of the Department, and the Department alone will oversee and administer the program. The statute clearly states that this is a Department run program, not a general law enforcement duty. No other law enforcement agency may create a similar program, or authorize any activities permitted under this program. Only the Department can authorize persons who have applied for and been selected to participate in the nonlethal pursuit program to engage in training exercises with their dogs.

The participants in the nonlethal pursuit program will be available for the Department to utilize as agents of the Department for the purpose of hunting or pursuing black bear, cougar, or bobcat to protect livestock, domestic animals, private property, or the public safety. The Department acknowledges that many of these skilled dog handlers may also be called upon by other law enforcement agencies, as permitted by RCW 77.15.245(2)(a), for a similar purpose. This rule

does not require a participant be available exclusively as an agent of the Department, nor does the Legislative authority for this rule authorize such exclusivity.

Ultimately, the Legislature's intent and Department's interest is in having well-trained working dogs and dog handlers available when needed to pursue dangerous wildlife to protect livestock, domestic animals, private property, or the public safety by providing a program for screening participants and providing closely monitored in-state training opportunities. If this rule has the effect of improving the quality and training of dogs and individuals utilized by other law enforcement agencies for a similar lawful purpose, this is an indirect benefit to public safety and wildlife throughout the state.

How the final rule reflects this comment:

No change to the rule proposal is made as a result of this comment because the comment address concerns not implicated by the rule, or policy concerns that are outside the scope of the proposed rules.

Comment:

Several commenters expressed the general concern that cougars will be killed or injured if this rule is adopted.

WDFW Response:

As stated in the name of this program, the title of the proposed rule, and in RCW 77.12.077, this program is nonlethal to cougars and prioritizes the ethical treatment of working dogs and wildlife. The purpose of this program is to provide dog training opportunities using nonlethal pursuit. The purpose of training dogs is to condition them to detect the scent of certain wildlife, train their behavior when the dog handler directs the dogs to follow the scent, train the dogs to abide by the handler's orders to cease pursuit and back off when a cougar is found and treed, and to train the handler in best practices for running a pursuit. The training exercise does not end with a physical confrontation with the wildlife, or the lethal removal of the animal. The better trained the dogs and dog handlers, the less likely a training exercise will result in a physical confrontation with the pursued wildlife.

The drafting of the rule and rule language seeks to safeguard and protect cougars in several ways. Provisions specifically to protect juvenile cougars and adult cougars with kittens were added, as discussed above. Further, recognizing the possibility that a nonlethal pursuit of wildlife could turn into a more dangerous situation for the dogs, dog handlers or wildlife, Department staff drafted and recommended additional subsections to the rule requiring nonlethal options for personal protection, and a protocol to halt a training pass and investigate the discharge of a firearm. As explained above, these provisions are directly related to wildlife protection and a response to public comments

How the final rule reflects this comment:

The rule explicitly directs that the nonlethal pursuit training program is intended to not lead to the killing of wildlife, and that the ethical treatment of wildlife and working dogs is paramount. Further, additions to the proposed rule included in the final rule regarding juvenile wildlife, nonlethal protection options, and the protocol following the discharge of a firearm each embrace public comments and serve to prevent the killing or injury of wildlife.

Comment:

One commenter believed a State Environmental Policy Act (SEPA) analysis should be conducted due to the potential conflict with working dogs and Gray Wolf.

WDFW Response:

Department staff confirmed with the Department SEPA Responsible Official, SEPA/NEPA Coordinator that a SEPA analysis is not necessary under WAC 220-660-800(12)(c), which categorically exempts “all activities of fire departments and law enforcement agencies except physical construction activity.” Additionally, a secondary exemption would apply; subsection (19) for procedural actions, as the rule does not include “substantive standards respecting use or modification of the environment.”

How the final rule reflects this comment:

No change to the rule proposal is made as a result of this comment because the comment address concerns not implicated by the rule.

Public Hearing Comments

Many of the public comments made during the December 4, 2020 Commission meeting expressed concerns about the well-being of cougars if the rule is adopted.

Comment:

One commenter recommended an initial field test of the readiness of the dogs and dog handlers to determine how well the program is working before it is fully implemented.

WDFW Response:

The Department has carefully drafted the rule to ensure that the working dogs and their handlers approved to participate in this program are already prepared to respond to calls for service by the Department to assist in response to dangerous wildlife encounters. The rule establishes strict criteria to participate in the program, and the training program established by this rule is meant to increase the quality of working dogs and their handlers available to the Department.

How the final rule reflects this comment:

The underlying purpose of the rule is to address the need for an in-state training program that provides ready and well-trained dogs to intervene in reported wildlife conflicts.

Comment:

One commenter expressed concern that the application of the rule will only increase conflict between cougars and other wildlife and dogs.

WDFW Response:

Working dogs and their handlers have proven to be a valuable tool that helps WDFW Police and the Department's wildlife conflict staff respond to dangerous wildlife incidents to preserve public safety. These include instances of wildlife, such as cougar or bear, encroaching into residential areas, where domestic animals, livestock, and in rare instances people, can be preyed upon. In these situations, dog handlers act as agents of the department to assist in tracking or pursuing dangerous wildlife.

The purpose of training dogs is to condition them to detect the scent of certain wildlife, train their behavior when the dog handler directs the dogs to follow the scent, to train the dogs to abide by the handler's orders to cease pursuit and back off when a cougar is found and treed, and to train the handler in best practices for conducting a nonlethal pursuit. The training exercise does not end with a physical confrontation with the wildlife, or the lethal removal of the animal. In fact, many training exercises do not end with a wild animal encounter at all, as pursuing the scent is the primary exercise. The better trained the dogs and dog handlers, the less likely a training exercise will result in a physical confrontation with the pursued wildlife.

By providing more training opportunities for working dogs and dog handlers, and thus improving their skill and control, the program is designed to reduce potentially harmful interactions between wildlife and humans and promote general safety around wildlife. The value of having ethical, competent, and well-trained dog handlers in the program is efficiency and prevention of harm to the dogs, the humans involved in a wildlife response, and ultimately the wildlife involved.

[How the final rule reflects this comment:](#)

The rule is not intended to increase conflict between dogs and wildlife; to the contrary, it aims to minimize any such conflict, including any such conflict with humans.

APPENDIX A

[PDF Link](#)

APPENDIX B

From: Mountain Lion Foundation

Subject: Speak Up For Washington's Cougars



Speak Up for Washington's Cougars

We need your help. Washington's Department of Fish and Wildlife (WDFW) will vote soon on passing CR102. This is a rule that will allow hound hunters to train their hounds using cougars as the bait. Their plan will let hound hunters chase and potentially kill Washington's cougars under the name of public safety training. They will even be allowed to chase female lions with kittens. WDFW is attempting to circumvent a law in Washington prohibiting hound-hunting of cougars and bears. The citizens of Washington State voted on this issue in 1996 and do not want hound-hunting. **Please help us convince the WDFW Commissioners to not allow this rule to be passed as written!!** [Attend](#) the December 4th video meeting and **speak up for our cougars**.

The meeting starts at 8 a.m. live streaming from the [WDFW](#) website. If you'd like to comment verbally, you'll find the [registration link here](#). To join the Commission meeting by phone please use one of the phone numbers here :1-253-215-8782 or 1-888-475-4499 (Toll Free) Then you'll be prompted to enter the Webinar ID: 972-7453-7186. You will be discussing item number 9, cougar pursuit training, which will begin at around 3:45. Arrive early. If you would like to comment in writing please make sure your comments are received by WDFW by December 7, 2020

Written comments may be emailed to: becky.bennett@dfw.wa.gov

Or mailed to: Becky Bennett - PO Box 43200 - Olympia, WA 98504

Here are a few talking points to help you create your comment in your own words.

- WDFW is attempting to circumvent a law in Washington prohibiting hound-hunting of cougars and bears. Washington's citizens voted on this issue in 1996 and do not want hound-hunting.
- Public Safety Cougar Removal Training with Dogs is very disturbing to cougars and allows WDFW to grant innumerable exemptions to the anti-hound hunting law, a law that was passed by the people.
- If this Rule is allowed to pass and cougars can be pursued "for public and livestock safety" for the purpose of training the dogs: It should be restricted to less than 50 people statewide, and they must not be allowed to bring family and friends during the training. 50 people or more would show that it has nothing to do with training dogs for safety and reveals the program is really just about allowing dogs and houndsmen to harass/terrorize cougars with the real goal being to open the door for hound-hunting of cougars and bears in WA once again.
- This program opens a huge opportunity for cougar poaching, which will be ignored by WDFW the same way wolf poaching has been ignored. Do not allow this as written.
- We demand that the sheriff's offices be prohibited from deputizing their own people to act as houndsmen. Their people should go through the same lottery system as everyone else. The sheriffs cannot be allowed to continue to use their own people, as some have been. WDFW is in charge of wildlife, not sheriffs.

Thank you for speaking up for Washington's Cougars!

Help spread the word and share this email with family and friends.



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