



# PETITION FOR ADOPTION, AMENDMENT, OR REPEAL OF A STATE ADMINISTRATIVE RULE

Print Form

In accordance with RCW 34.05.330, the Office of Financial Management (OFM) created this form for individuals or groups who wish to petition a state agency or institution of higher education to adopt, amend, or repeal an administrative rule. You may use this form to submit your request. You also may contact agencies using other formats, such as a letter or email.

The agency or institution will give full consideration to your petition and will respond to you within 60 days of receiving your petition. For more information on the rule petition process, see Chapter 82-05 of the Washington Administrative Code (WAC) at <http://apps.leg.wa.gov/wac/default.aspx?cite=82-05>.

## CONTACT INFORMATION *(please type or print)*

Petitioner's Name Brad Thomsen  
Name of Organization \_\_\_\_\_  
Mailing Address [REDACTED]  
City [REDACTED] State [REDACTED] ZIP 98020  
Telephone [REDACTED]

## COMPLETING AND SENDING PETITION FORM

- Check all of the boxes that apply.
- Provide relevant examples.
- Include suggested language for a rule, if possible.
- Attach additional pages, if needed.
- Send your petition to the agency with authority to adopt or administer the rule. Here is a list of agencies and their rules coordinators: <http://www.leg.wa.gov/CodeReviser/Documents/RClist.htm>.

## INFORMATION ON RULE PETITION

Agency responsible for adopting or administering the rule: WDFW

☐ 1. NEW RULE - I am requesting the agency to adopt a new rule.

- ☒ The subject (or purpose) of this rule is: Please See Attached
- ☒ The rule is needed because: Please See Attached
- ☒ The new rule would affect the following people or groups: Please See Attached

☐ **2. AMEND RULE - I am requesting the agency to change an existing rule.**

List rule number (WAC), if known: \_\_\_\_\_

☐ I am requesting the following change: \_\_\_\_\_

☐ This change is needed because: \_\_\_\_\_

☐ The effect of this rule change will be: \_\_\_\_\_

☐ The rule is not clearly or simply stated: \_\_\_\_\_

☐ **3. REPEAL RULE - I am requesting the agency to eliminate an existing rule.**

List rule number (WAC), if known: \_\_\_\_\_

*(Check one or more boxes)*

☐ It does not do what it was intended to do.

☐ It is no longer needed because: \_\_\_\_\_

☐ It imposes unreasonable costs: \_\_\_\_\_

☐ The agency has no authority to make this rule: \_\_\_\_\_

☐ It is applied differently to public and private parties: \_\_\_\_\_

☐ It conflicts with another federal, state, or local law or rule. List conflicting law or rule, if known: \_\_\_\_\_

☐ It duplicates another federal, state or local law or rule. List duplicate law or rule, if known: \_\_\_\_\_

☐ Other (please explain): \_\_\_\_\_

Jan 27, 2023

To Whom It May Concern:

Please find attached my "Petition For Adoption, Amendment, Or Repeal Of A State Administrative Rule"

I have checked the box, "1. New Rule – I am requesting the agency adopt a new rule."

As per the questions associated with the form: "The subject (of purpose) of this rule is: "immediately begin Rule Making for the 2024 and future year(s) Spring Black Bear Management Hunts"

Included in this Petition as Attachment is the WDFW Document;

"Bear Timber Damage 2022 – 2022"

This document shows currently the Department has a program in place to address Spring Black Bear Timber Damage on Private Lands

Also find attached copy of letter from WDFW Commission Chair Barbara Baker dated November 28, 2022.

These two documents are evidence of there is currently a program in place to address Black Bear Timber Damage on Private Lands.

Next:

Currently there is no Spring Black Bear Timber Damage Program in place for Pubic Lands.

The WDFW Commission on November 18<sup>th</sup> 2022 voted to permanently end Spring Black Bear Hunting which had previously been the Departments tool to address Spring Black Bear Timber Damage on Public Lands.

Next:

Find attached King5 News story "Washington State Supreme Court rules that trust lands are to fund schools.

Next:

Attached is a copy of the WDFW Staff Summary Sheet from the January 27<sup>th</sup> 2023 Commission Meeting in response to the Petition, "immediately begin Rule Making for the 2023 and future year(s) Spring Black Bear Management Hunts"

Approving the petition "begin Rule Making for Bear Timber Damage on Public Lands"

Will serve to accomplish the following:

- WDFW Staff stated in their summary sheet the Department needs to develop specific thresholds that trigger management-based Spring Black Bear Hunting.

- WDFW Staff state in their summary sheet the Commission has informed the Department staff and the public through a commission motion on November 18, 2022, that it will not adopt recreational hunting of black bear in the Spring. Commission discussion also indicated on the record that the commissioners would consider hunts that would use recreational licensed hunters when needed to address certain management objectives, such as timber damage, achieving ungulate management objectives, or human-wildlife conflict issues.
- During the week of Jan 23rd –Jan 27<sup>th</sup> 2023 a large volume of previously unknown information was presented to the Department Staff and Commissioners. There was not sufficient time during the week of Jan 23-Jan27 for the Commissioners and Staff to fully read and digest this extensive volume of previously unknown material.
- It is imperative this current Petition be scheduled to a Commission Meeting within the next 4-6 weeks as that is sufficient time for Department Staff and Commissioners to study and review this new material.
- It is imperative this current Petition be approved as without a directive from the Commission it reads that the Department Staff ‘may require additional guidance from the commission related to those thresholds.’
- It is imperative this Petition be approved as the Department and Commissioners have provided no evidence that the cancelling of the Recreational Spring Black Bear Hunting Season has resulted in a decrease in Spring Black Bear Timber Damage on Public Lands.
- Time is of the essence. The Washington State Supreme Court Ruled in June 2022 ‘Washington State Supreme Court rules that trust lands are to fund schools’
- There is no time to allow continued Spring Black Bear Timber Damage on Public Lands to rise to the threshold of a crisis when this State’s Supreme Court has so recently placed such a high regard on sale of public land timber sales to fund our States Schools.
- It is absurd to believe WDFW Staff are not aware that Spring Black Bear Timber Damage continued unchecked with large areas of Timber Damage, especially to Douglas Fir Trees by Black Bears in the Spring.
- I have previously provided extensive materials in previous Petitions to this subject that throughout the history of this state the Spring Black Bear Hunting Season was one of the three pillars of Spring Black Bear Timber Damage Management.
- It is unacceptable for the WDFW Commission and Department Staff to continue to kick the issue of Spring Black Bear Timber Damage on Public Lands down the road and do nothing while Spring Black Bear Timber Damage on Public Lands is soon to reach a crisis point.
- This petition also serves as a notice of sorts to ask the Commission why on November 18<sup>th</sup> during the same meeting they voted to continue a program that addresses Spring Black Bear Timber Damage on Private Lands while during the same meeting voting to cancel the Spring Black Bear Hunting Season which historically was a primary management tool to address Spring Black Bear Timber Damage on Public Lands.
- This Petition is due to the WDFW Commission and Staff failing to prove they in fact read, reviewed, discussed or were aware of the material presented in over 1000+ public

comments submitted in favor of the WDFW Spring Black Bear Hunt Petition during their meeting of January 27<sup>th</sup>.

- Further, this petition is needed as there were 92 people signed up to speak and present information in support of the January 27<sup>th</sup> 2023 Petition to immediately begin Rule Making for the 2023 and future year(s) Spring Black Bear Management Hunts and most of those persons were prohibited from speaking.
- The Commissioners provided no new information or science in support of their vote to cancel what was an entirely new Petition for an entirely new set of Management concerns. Rather, they fell back on old tired excuses which the public has heard ad nauseam from these Commissioners.
- It was glaringly obvious in their old tired previously used excuses that were regurgitate in denying the Petition of January 27<sup>th</sup>, they had not even heard, read or considered in any meaningful way the tremendous volume of new information that they were provided (and the tremendous amount of new information they actively blocked from being considered by not allowing the public time to present new information to them during Open Public Comments on January 27, 2023)
- The Commission and Staff failed to show the process and procedures they used during the time period of Jan 23<sup>rd</sup> 2023 – January 27<sup>th</sup> 2023 to fully read, study and comprehend the tremendous amount of new information that was provided to them once Department Staff uploaded the WDFW Staff Summary Sheet on Jan 23<sup>rd</sup> which provided the Staff Recommendations regarding the “immediately begin Rule Making for the 2023 and future year(s) Spring Black Bear Management Hunts” petition of January 27<sup>th</sup> 2023
- It is not believable that the Staff and Commission in any way provided themselves adequate time on January 27<sup>th</sup> 2023 between the Agenda time of 2:20pm – 3:12pm to actually present, discuss and analyze of 1000+ unique emails in support of the Spring Black Bear Management Hunts.
- This petition serves to allow the Commission and Staff adequate time to appropriately review, read, and analyze the tremendous amount of new information that was both provided during Jan 23<sup>rd</sup> 2023 through Jan 27<sup>th</sup> 2023 via public comments sent to the Commission and Staff and also provides the Commission and Staff time to reflect on their strategy of prohibiting people who sign up to provide Open Public Comment an opportunity to provide their statements.
- The Commission and Staff failed to disclose the methods or procedures the Commission uses to weigh Public Comment nor the weight they give to the preponderance of pro Spring Black Bear Timber Damage Hunts versus the very small percentage of anti Spring Black Bear Timber Damage Hunts comments they receive.
- We learned during the November 18<sup>th</sup> Commission Meeting there is tremendous weight given to a text message sent to a Commissioner during a Commission Meeting. But alas, the public at large does not have that same degree of access to Commissioners during Commission Meetings.
- Several of the Commissioners have repeatedly stated again and again they need data, they need science, they need input, yet what we saw during the week of Jan 23<sup>rd</sup> – Jan 27<sup>th</sup> was nothing short of an attempt to block the public from providing comments, information,

data and science in support of the Petition to “immediately begin Rule Making for the 2023 and future year(s) Spring Black Bear Management Hunts” which was on the calendar January 27<sup>th</sup>.

- This Petition is to save Washington States Primary Source of Funding for Washington States Public Schools from Spring Black Bear Timber Damage.
- The WDFW Commission was negligent in their voting to cancel the Spring Black Bear Hunting Season without first showing or conducting a study to show the financial losses suffered yearly on Washington State Public Timber Lands.
- As clearly expressed in the Washington State Court Case, Washington State Public Timber Lands are held in Public Trust.
- The WDFW violated their responsibility in providing management of Black Bears Damaging Trees on State Public Land.
- The Commission was negligent in not providing an alternate or replacement source of funding for our States Public Schools as a result of their decisions to cancel Spring Black Bear Hunts on Public Lands which were designed to address Spring Black Bear Timber Damage on Public Lands.
- The Staff, The Commission and The Department did not prove prior to cancelling the Spring Black Bear Season on Public Lands that canceling Spring Bear Hunting in those areas those seasons specifically targeted would decrease or has decreased in Spring Black Bear Timber Damage.
- The WDFW Commission to cancel the Spring Black Bear Hunting Season on Washington State Public Lands has been a direct attack on our States Schools primary source of funding.
- Paragraph 2 of the Staff Summary of January 23rd states there were not Management issues identified regarding the petition to “immediately begin rule making for the 2023 and future years Spring Black Bear Management Hunts”.
- I challenge the WDFW Staff in the next Staff Summary they will be providing for this petition to cite their sources for that assumption in light of the lack of evidence the WDFW Staff or Commission studied, gather evidence, nor talked to the Timber Managers of Washington State Public Timber Lands to inquire regarding the results of their vote to cancel the Spring Bear Hunting Season on Public Lands.
- This petition must be approved immediately before further harm is done to our states primary source of funding for our States primary source of funding for schools.
- This petition also serves to address the WDFW and Staff decision on November 18<sup>th</sup> to continue a program to protect Private Timber Lands and Corporate Timber Lands from Spring Black Bear Timber Damage while on the same day voting to end protections to Public Timber Lands from Spring Black Bear Timber Damage.
- This Petition also provides a public opportunity for Staff and Commissioners to discuss their decisions to continue a program that protects Private and Corporate For Profit Timber Lands which to my knowledge are not funding sources for Washington State Public Schools.



- The Commission and Staff need to provide benchmarks for bear predation on ungulate survival
- The Commission and Staff need to provide benchmarks for Bear Timber Damage thresholds
- The Commission and Staff need to provide benchmarks for Conflict Management thresholds.
- Bears are a limiting factor for neonate survival.
- The Commission is now at odds with the Staff by not providing these thresholds to Staff.
- The Commission and Staff focused too much on the part of the prior petition '2023' and did not consider the part of the prior petition title 'and future year(s)'
- The Staff previously brought thresholds to the Commission in the past and the Commission rejected the Staff provided thresholds.
- The Commission has not told Staff how to use the Spring Bear Management thresholds.
- Management is almost always a part of hunting.
- The Commission has stated Spring Bear Management Hunts can move forward in the January 27<sup>th</sup> 2023 yet the conversation of January 27<sup>th</sup> revolved heavily around 'thresholds'
- I would like to ask the Commissioners to provide the 'Science' they use in their decision to continue to not have a Spring Bear Season. They have stated there was not the right or correct science to have a Spring Bear Season in the past, yet they did not provide the science they used to continue with no Spring Bear Hunting Management Hunt.
- This petition allows the Commission to have more discussions regarding Spring Bear Hunting. This is a great opportunity for the Commission to have these discussions publicly with public involvement.
- Immediately Begin rule making for the 2024 and future year(s) Spring Black Bear Management Hunts.
- The Commission has failed to provide benchmarks and guidance to the Staff.
- Only by the use of this petition to begin rulemaking can the Commission be compelled to provide staff the benchmarks and guidance needed for management and conservation.
- This petition is an opportunity to open rule making
- This petition can be used to amend the failure of the Commission to maintain the public's trust.
- Opening this rule allows the Commission to correct the mistake they made in cancelling the Spring Black Bear Hunting Season.
- The Game Management is not the proper place to discuss the Spring Black Bear Hunting Season.
- The filing of a CR-102 is the proper place to discuss the Spring Black Bear Hunting Season.

Time is of the essence for the WDFW to step up and handle their responsibility to provide the same Spring Black Bear Timber Damage Hunts for both Private Timber and Public Timber.

I look forward to this petition being scheduled at the earliest convenience.

Thank-you

A handwritten signature in cursive script, appearing to read "Brad Thomsen", with a long horizontal flourish extending to the right.

• Brad Thomsen





## Bear Timber Damage 2022 - FAQ

### Why did the original Bear Timber Damage Program stop?

The validity of a Washington Administrative Code (WAC) rule providing for the issuance and use of the black bear timber damage depredation permits found in [WAC 220-440-210](#) was challenged in an appeal to the Washington State Court of Appeals. The court invalidated the rule and thus the Department has limited ability within current laws in order to address bear caused timber damage.

### What is currently happening with the litigation?

A portion of the court case was resolved when Washington State Court of Appeals invalidated the rule. There are portions of the litigation that were remanded to Thurston County Superior Court, and the Department cannot comment on active litigation.

### What is Washington Department of Fish and Wildlife (WDFW) able to provide in response to timber damage this season?

Under [RCW 77.12.240](#), WDFW may authorize the lethal removal of black bears causing damage to private property subject to the limitations in RCW 77.15.245. WDFW is considering requests for authorization to kill timber-damaging black bears with firearms ("boot hunting") on a case-by-case basis. Under very limited circumstances, the local WDFW conflict specialist may be able to deploy a culvert trap in an effort to trap and remove a timber-damaging bear, but only if a trap is available and the conflict specialist has the time and ability.

### How do I request WDFW assistance responding to timber damage?

Each timber company will need to work with their local Wildlife Conflict Specialist (WCS) to address bears causing timber damage. The WCS will need to retrieve the following information:

- Location of damage.
- Verification of the fresh damage either by a site visit, a photograph, or any other means as requested by the WCS.
- What non-lethal methods have been employed in attempt to prevent the damage.
- Whether supplemental feeding is currently occurring on the property or not.
- Any additional information the timber company or WCS feels is important for consideration.

The WCS will evaluate whether a kill permit is appropriate for each specific case, or alternatively, may consider if culvert trapping is an option. If the timber company would like to request a kill permit, the company should coordinate with the WCS to submit the above information along with a request for issuance of a kill permit.

## Who approves each kill permit?

Every permit will need to be reviewed, approved, and signed by the Wildlife Conflict Section Manager, Jim Brown, or whomever he designates as acting in his absence.

## How long will it take to receive a kill permit?

Each permit request will be evaluated on a case-by-case basis considering the information provided by a permit applicant and potentially additional information gathered by WDFW in a field visit or desk review. Normally, if a timber company has provided the WCS with needed information, WDFW staff will have kill permits issued within three business days of receiving a request. Promptly responding to requests for any additional information needed for approval will assist with the speed of processing.

## How long will the kill permit be valid for?

The duration of each kill permit will be considered on a case-by-case basis.

## How many bears are allowed to be taken under each permit?

Each permit will state the number of bear(s) approved to be killed, which will depend on the specific damage situation. If a timber company would like to request a permit to kill more than one bear in a location, the request should include information explaining why the removal of two or more bear is necessary to address the timber-damage occurring at that location.

## Can I receive more than one kill permit if I have multiple locations of damage?

Yes. However, each location of damage will require a separate kill permit and will need to be reviewed for approval independent of other damage locations on the property.

## Can I receive a kill permit for bear timber damage if I am in a grizzly bear recovery zone?

Yes, but hunters will need to comply with the bear identification test. If this situation occurs, WDFW will outline any additional requirements upon issuance of the permit, and those requirements must be met before the permit may be used.

For more information on where the grizzly bear recovery zones are and the bear identification program, please visit our website at this link: <https://wdfw.wa.gov/hunting/requirements/bear-identification-testing>

## Will there be requirements associated with the take of a bear under a kill permit?

Yes. Each permit will include conditions and requirements based on a case-by-case analysis of the specific timber damage situation. This will include time, place, and manner restrictions, as well as harvest reporting requirements (e.g., bear tooth envelope to be returned to WDFW). Each permit will also address the disposition/possession of any carcasses. Barring unusual circumstances, the gall

bladder will need to be turned over to the WCS while the hunter would be able to retain the remainder of the carcass.

Is a license or tag required for the take under a kill permit issued in response to bear timber damage?

No, there is no WDFW license, tag, or fee required.

When can I apply for a bear timber damage kill permit?

Bear timber damage kill permits are generally issued beginning around April 15<sup>th</sup> and are not usually issued after June 30<sup>th</sup> of each year. If a timber owner has a problem with timber damage outside of this time frame, s/he may contact the WCS to assess the situation and to discuss options for addressing the cause of the damage.



State of Washington  
**Fish & Wildlife Commission**

Mailing Address: P.O. Box 43200, Olympia, WA 98504-3200 • (360) 902-2200 • TDD (360) 902-2207  
Main Office Location: Natural Resources Building, 1111 Washington Street SE, Olympia, WA

November 28, 2022

Brad Thomsen

P.O. Box 203

Edmonds, WA 98020

Email: [brad@bradthomsen.com](mailto:brad@bradthomsen.com)

Dear Mr. Thomsen:

This letter is to let you know the results of the Washington Fish and Wildlife Commission's consideration of your petition requesting the WDFW Commission to "immediately begin/resume possible rulemaking/rulemaking amendments for Black Bear Timber Damage Depredation Permits."

In response to your petition, the Commission voted to initiate a rulemaking as the department is already working towards rulemaking on WAC 220-440-210.

To access the audio recording of the proceedings the Commission's web page at: [2022 WDFW Commission meeting minutes and agendas | Washington Department of Fish & Wildlife](#) and select the "audio/video" for the meeting.

Thank you for bringing your concerns forward and proposing solutions through the rulemaking process.

Sincerely,

Barbara Baker, Chair  
Washington Fish and Wildlife Commission

cc: Fish and Wildlife Commission  
Kelly Susewind, Director  
Eric Gardner, Director, Wildlife Program  
Joe Panesko, Assistant Attorney General



LOCAL NEWS

## Washington State Supreme Court rules that trust lands are to fund schools

The justices ruled against environmental groups who argued the DNR was too focused on logging state lands to generate revenue for school construction and other uses.

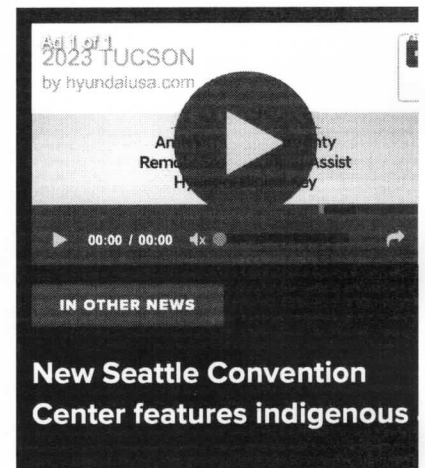


Credit: KING

Author: **Associated Press**  
Published: **1:39 PM PDT July 21, 2022**  
Updated: **1:39 PM PDT July 21, 2022**



**SPOKANE, Wash.** — The Washington state Supreme Court on Thursday ruled the Department of Natural Resources (DNR) must manage state trust lands for the financial benefit of schools and other institutions, rejecting a claim by environmental groups that such lands should be managed to benefit all residents.



In a unanimous decision, the justices ruled against environmental groups who contended that DNR was too focused on logging state lands in order to generate revenue for school construction and other uses.

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The Supreme Court also ruled that DNR is obligated by law to manage forest lands for the benefit of counties that granted land to the state.

The DNR policies provide “a benefit to the general population by boosting local economies as well as maintaining stronger and better-funded public systems of education and governance,” the court ruled.

“DNR’s discretionary land management strategies are neither unconstitutional nor arbitrary and capricious,” the court said in affirming the trial court’s dismissal of the case.

Upon Washington’s statehood in 1889, the federal government granted the state 3 million acres of land, designated to support public institutions, including K-12 school construction and state universities. Approximately 2 million acres of the federally-granted state trust lands are forested.

The state Constitution states that “all the public lands granted to the state are held in trust for all the people.”

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Conservation Northwest, Washington Environmental Council, Olympic Forest Coalition, and eight affected individuals from across the state filed a lawsuit, contending that state lands are currently managed to maximize revenue for certain funds above all other objectives.

The state’s focus on generating revenue leads to intensive logging of public lands, in contrast to a more balanced approach of logging, employment, promoting forest health and fisheries, and sequestering carbon, the lawsuit said.

“Washingtonians should not be forced to choose between logging revenue and healthy forests that protect local air, water, and habitat— particularly in a time of climate crisis, as well as decline and extinction of species,” the environmental groups contended.

The trust lands fund no more than 6% of the state’s school construction annually, environmental groups said.

The plaintiffs in 2020 filed a lawsuit against DNR in King County Superior Court, calling for management of lands for the benefit of all people. The lower court ruled in favor of DNR, and the case then went to the state Supreme Court.

### Washington superintendent wants timber sales to benefit rural school districts



#### Related Articles

There is an ongoing debate about whether or not 'surveillance' signs in King County

Timber sales should benefit rural school districts, state superintendent says

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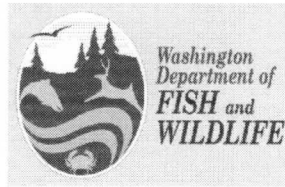
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## Fish and Wildlife Commission Presentation Summary Sheet

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**Meeting date:**

1/27/2023

**Agenda item:**

Petition to immediately initiate rule making that would contemplate a 2023 and future year(s) spring Black Bear management hunts.

**Presenter(s):**

Anis Aoude, Game Division Manager, Wildlife Program.

**Background summary:**

The existing spring bear rule WAC 220-415-080 authorized the 2021 spring black bear hunting season and remains unchanged after the Commission did not authorize a 2022 season. The Commission has informed Department staff and the public through a Commission motion on November 18, 2022, that it will not adopt recreational hunting of black bear in the Spring. Commission discussion also indicated on the record that the commissioners would consider hunts that would use recreational licensed hunters when needed to address certain management objectives, such as timber damage, achieving ungulate management objectives, or human-wildlife conflict issues. Department staff currently do not have any new or different management-based needs than what has been presented in the past. Thus, Department staff are not prepared to recommend a 2023 management-based Spring black bear permit season. The Department may consider a management-based Spring black bear hunting in the future after developing specific thresholds on which to base these recommendations. This may require additional guidance from the commission related to those thresholds.

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**Staff recommendation:**

Department staff recommend denying this petition. There is no new or different information to present at this time that would necessitate a management-based Spring black bear permit hunting season. This could change in the future once the Department develops specific thresholds that trigger management-based Spring black bear hunting.

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**Policy issue(s) and expected outcome:**

If this petition is denied no rule making will take place to contemplate a 2023 spring black bear recreational hunting season.

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**Fiscal impacts of agency implementation:**

The fiscal impact of this decision is minimal and is not different from the status quo, based on previous commission decision.

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**Public involvement process used and what you learned:**

The public were given notice of this petition and encouraged to comment. There was no public involvement directly related to this petition prior to its submission. A public engagement process will occur if rule making occurs in the future.

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**Action requested and/or proposed next steps:**

Dependent on Commission decision.

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**Draft motion language:**

I move we deny the petition.

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**Post decision communications plan:**

Communicate the outcome of the Commission's decision to the petitioner.

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*Form revised 1-20-21*