

WDFW Managed Non-lethal Pursuit Training Program – Briefing and Decision

NEW SECTION
WAC 220-412-130

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Fish and Wildlife Commission Presentation Summary Sheet

Meeting date:

01/25/2021

Agenda item:

WDFW Managed Non-lethal Pursuit Training Program- Briefing and Decision

Presenter(s):

Rebecca Bennett, Community Outreach Liaison, Jeff Wickersham, Region 5 WDFW Police Captain

Background summary:

Department staff will brief and request a decision for the new section WAC 220-412-130 Nonlethal pursuit training pass program.

The Fish and Wildlife Commission is authorized to allow the use of dogs to hunt or pursue black bear, cougar, or bobcat if there is a public safety need; to protect livestock, domestic animals, and private property; for scientific purposes; or to protect endangered species. (RCW 77.15.245)

Washington Department of Fish and Wildlife (WDFW) Officers and Conflict Staff work with the dog handlers during dangerous wildlife incidents, but due to the earlier established laws surrounding hound hunting in Washington, handlers have had to train their dogs outside the state to keep their dogs in fit and prime condition.

As the Department relies on these handlers as necessary tools during public safety incidents RCW language was drafted and ran in a collaborative effort by multiple stakeholders during the 2019 legislative session. RCW 77.12.077 was codified late 2019 directing the Commission to adopt by rule a process and criteria to select persons who may act as agents of the state for the purpose of using one or more dogs to hunt or pursue black bear, cougar, or bobcat to protect livestock, domestic animals, private property, or the public safety.

The RCW further states the department shall administer a training program to enable persons who have been selected pursuant to subsection (1) of this section to train dogs for use consistent with this section. The purpose of this program is to provide dog training opportunities using nonlethal pursuit.

Additional collaborative work was taken on the currently proposed Commission rulemaking language. The CR 102 was filed October 15, 2020 for public review. The proposed CR-102 Non-Lethal Pursuit Training Pass Program emphasizes safe, ethical, responsible, and lawful hound handling practices as well as detection of specific wildlife species by dogs. The goal of the non-lethal pursuit training pass program includes improving dog handler/department relations, effective detection of target species when requested by the Department, and the ethical treatment of working dogs and wildlife.

This agenda item will include a short staff briefing on the new section, WAC 220-41-130 Nonlethal pursuit training pass program, followed by time for the Commissioners to deliberate and vote on the proposed program.

Staff recommendation:

Staff recommends a motion to approve the proposed language with recommended adjustments.

Policy issue(s) and expected outcome:

This is a Commission discussion and expected decision to either adopt, amend and adopt, or not adopt the proposed WDFW Managed Non-Lethal Pursuit Training Program as presented by staff.

Fiscal impacts of agency implementation:

No fiscal impact.

Public involvement process used and what you learned:

This process has benefited from significant public engagement through a collaborative stakeholder group consisting of Agriculture Organizations, Conservation Groups, County Officials, Working Dog Members, and WDFW Staff.

The Department posted draft proposed rules on the WDFW website October 15, 2020 for public review and comment period of 50-days. Additional public engagement happened via the December 4 Commission hearing and the rulemaking public comment period, which ended December 7.

A summary of public comments is included in the Commission briefing packet.

Action requested and/or proposed next steps:

Staff will initiate implementation of the program through development of the procedural requirements including an affidavit, application documents, and supplemental training materials.

Draft motion language:

Motion: I move to adopt WAC 220-412-130 with the recommended adjustments as presented by staff.

Is there a “second”?

Post decision communications plan:

Staff will work with Public Affairs to develop a communications plan to elicit possible applicants announce procedural requirements.

Form revised 1-20-21

NEW SECTION

WAC 220-412-130 Nonlethal pursuit training pass program. (1) In order to effectively manage and train hound handlers and their dogs to be agents of the state used for cougar conflict response, the department establishes the nonlethal pursuit training pass program.

(2) The nonlethal pursuit training pass program emphasizes safe, ethical, responsible, and lawful hound handling practices as well as detection of specific wildlife species by dogs. The goal of the nonlethal pursuit training pass program includes improving dog handler/department relations, effective detection of target species when requested by the department, and the ethical treatment of working dogs and wildlife. The yearly application cost to be considered for placement on the list of screened nonlethal pursuit handlers shall be twenty-five dollars and will cover the cost of an application review and a background check. This cost will occur annually when renewing an application to be on the list of screened nonlethal pursuit handlers. The WDFW enforcement program shall determine the nonlethal pursuit program's requirements and curriculum in consultation with

stakeholders including, but not limited to, working dog handlers and wildlife conservation organizations in Washington state.

(3) Working dog handlers are held to the highest ethical standards as these individuals may be asked to perform as agents of the state under RCW 77.12.077. As such, they may be ambassadors for the department and the working dog community. Criteria to be considered include the following:

(a) Currently own and train working dogs on scent detection and tracking;

(b) Maintain health records of working dogs;

(c) An active working knowledge of predator detection and pursuit training techniques;

(d) Hold a current driver's license;

(e) Up-to-date vehicle registration and vehicle insurance for any vehicle used to transport working dogs;

(f) Understanding of best practices in dog handling equipment and proper usage; and

(g) Working knowledge of terrain navigation and digital mapping equipment.

Initial approved applicants on the list of screened nonlethal pursuit handlers and individuals reapplying to be approved on the list

of screened nonlethal pursuit handlers must annually submit to a criminal background check, and the department shall deny entry into the nonlethal pursuit training pass program to those applicants who have:

- Been convicted within the last ten years of any criminal offense under chapter 77.15 RCW (WDFW enforcement), 76.48 (specialized forest products), or 16.52 (animal cruelty) RCW;

- Been found to have committed, or to have paid, any infraction for a violation of chapter 77.15 RCW except recreational fishing under RCW 77.15.160, in the last ten years;

- Been convicted within the last ten years of any crime of dishonesty;

- Been convicted of any felony, or released from custody pursuant to any felony conviction, within the last ten years;

- Been convicted of, or been found to have committed, any criminal or civil violation where the department obtains a report from the citing authority that alleges the applicant was deceptive, untruthful, or obstructed a law enforcement officer in the course of the officer's duties, other than violations of RCW 46.61.050 and 46.61.400, within the last ten years;

- Been convicted of unlawful possession of a firearm under RCW 9.41.040, or has been convicted of any felony offense and the applicant has not successfully petitioned to have the applicant's firearm rights restored, or is otherwise ineligible to possess a firearm for any reason provided in RCW 9.41.040;

- A current hunting or fishing license revocation or a current suspension of hunting or fishing license privileges in Washington or in another state.

An applicant must disclose to WDFW at the time of application whether the applicant is aware of any pending criminal charges in any municipal, state, or federal court. The department may defer approval or denial on an application until such criminal charges have been adjudicated.

The department may, based on the results of a criminal background check or based on information it has received involving active investigations or pending charges, deny an application, at its discretion, if it believes the applicant does not meet the high ethical standards of the program, or would not be a suitable state agent or ambassador for the department and the working dog community.

(4) If a firearm is discharged at any point during a training activity, the training pass granted pursuant to subsection (11) shall

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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.

(5) A Non-Lethal 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.

(64) An individual who holds a current nonlethal pursuit training pass and is found to have any of the invalidating circumstances addressed in subsection (3) through (5) of this section, shall be removed from the program and the training pass revoked. If the department learns of a new pending criminal charge or incident involving a current training pass applicant which could lead to an invalidating circumstance addressed in subsection (3) through (5) of this section, the department may suspend the training pass applicant's participation in the program until resolution of the charge or incident.

(75) Nonlethal pursuit training pass applicants will be required to complete an agency affidavit which specifies that the applicant has read, understands, and will comply with the program rules and ethical

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standards required of the program. This affidavit must be signed, dated, and returned along with a copy of the applicant's driver's license, current proof of vehicle liability insurance, and a copy of a valid hunting license. Submission of false or fraudulent information is grounds for removal from the program.

~~(86)~~ The enforcement program nonlethal pursuit training pass program coordinator will maintain open communications with landowners and the community. The department will investigate written accusations about nonlethal pursuit program participants and determine whether such complaints have merit and/or warrant enforcement or administrative action.

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~~(97)~~ Any person who has been denied initial admission into the nonlethal pursuit training pass program, or renewal of his or her application to be placed on the list of screened nonlethal pursuit handlers, has the right to an administrative hearing to contest the agency action pursuant to chapter 34.05 RCW. An applicant denied a training pass may request an informal review within thirty days of receipt of the application denial. The request for an informal review shall be served on the chief of the enforcement program in writing. The chief may ask the applicant and department for additional information before ruling on the informal appeal, and shall respond to

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the informal appeal in writing. The applicant shall have initiated the formal appeal no later than thirty days from receipt of the notice of denial of the training pass, or thirty days from receipt of the decision on the informal review, whichever is later. Date of receipt shall be five days after any written notice or decision is mailed to the applicant. Initial nonlethal pursuit training pass applicants who fail to submit the application fee or who submit an incomplete application will have their application returned. Denial of admission on these grounds does not trigger the right to an administrative hearing.

(810) Training program enrollment - The department will authorize no more than fifty valid training pass holders to participate in the program annually on a statewide basis. 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.

(119) Prior to engaging in any nonlethal pursuit training activity, a member of the nonlethal pursuit training pass program shall obtain from the department captain with oversight responsibility

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for the area proposed to be used for training a nonlethal pursuit training pass, which will be in via paper or electronic format. A nonlethal pursuit training pass, issued at the captain's discretion, will be issued for a period of up to thirty days, with an option for a thirty-day renewal at the request of the training pass holder. This training pass will detail the time frame and geographic scope of the training area that is acceptable to the captain and the training pass holder. Prior to engaging in a training exercise within the limitations of the training pass, the training pass holder will communicate with a department sergeant with oversight of the training area. The training pass holder shall keep the department sergeant appraised of regular training activities, and the sergeant shall keep the training pass holder appraised of any operational or logistical concerns or restrictions. A department captain may, at any time, change the geographic scope or time frame of the training pass to address management or emergent needs, and retains the discretion to terminate a training pass. The Department Captain shall restrict training pass scope for certain Game Management Units (GMU's) during big game hunting seasons when prudent.

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(12) Any training pass holder engaged in training activities

is required to carry either pepper spray or an air horn so that non-lethal means are available to mitigate wildlife interactions.

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(13) Training pass holders will be allowed to have up to four

immediate family members present while participating in a training exercise with a nonlethal pursuit training pass. "Immediate family member" shall be limited to spouses and domestic partners, children and step-children, siblings, parents, and step-parents. Additionally, the owner of real property who has granted permission to the training pass holder to use said lands for a training exercise with a nonlethal pursuit training pass may be present with the training pass holder or may designate a representative in writing. Corporate landowners may designate security personnel or contractors to accompany a training pass holder participating in a training exercise with a nonlethal pursuit training pass. A department sergeant with oversight of the training area may authorize, in advance, additional observers of a training pass holder participating in a training exercise with a nonlethal pursuit training pass.

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(14) As a best practices in dog handling, training pass holders

shall not knowingly engage in the pursuit of spotted kittens or

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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.

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(15+) Training pass holders shall maintain a logbook of training activities under the nonlethal pursuit training program. Logbooks shall be made using a template made by the department to be uploaded online or downloaded and printed. Entries in the logbook shall include:

(a) Training pass holder's name, names of those accompanying or observing the training exercise, and number of dogs trained or participating;

(b) Date and location of the training, including the names of any roads traveled, trails traveled, or routes taken. The entry shall specify the owners of any land traversed;

(c) If any cougars were detected, the logbook must contain the corresponding GPS coordinates; and

(d) The discharge of any firearms, identification of the firearms, and the person responsible for the discharge.

Logbooks are required to be completed for each training trip before leaving the field. Logbook pages must be provided to the department through an online reporting system or postmarked within ten days following any calendar month in which the training pass activity took place.

[]

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

RECOMMENDED ADJUSTMENTS

The department recommends the following adjustments since the Code Reviser filed (CR-102). The adjustments are included in your notebooks.

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- Addition: 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.

Rationale: Additional clarification on how the training pass holder will be put on hold until WDFW Police conducts an investigation and determines why the firearm was discharged. This language was originally drafted in the Affidavit language but was added to the proposed WAC to provide a defined rule if a firearm is discharged during a training activity.

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- Addition: A Non-Lethal 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.

Rationale: The addition is made to mitigate concerns that the training pass holder will unlawfully utilize this program for personal cougar hunting opportunities. 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.

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- Addition: The Department will authorize no more than 50 individuals to participate in the Non-Lethal Pursuit Training Pass Program annually. 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.

Rationale: Public testimony pointed to concerns that the program would generate an excessive number of pass holders conducting training in certain areas of the state. Additionally, it would overwhelm staff in those areas managing trainings. The recommended adjustment accounts for the need to disperse working dog handlers statewide as there is a need statewide. Language provides an “up to” number to generate a ceiling or cap per region and detachment. This spreads trainings out more evenly across the state and keeps staff management feasible.

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- Change: Prior to engaging in any non-lethal pursuit training activity, a member of the Non-Lethal Pursuit Training Pass program shall obtain from the Department Captain with oversight responsibility for the area proposed to be used for training a Non-Lethal Pursuit Training Pass, which will be in via paper or electronic format. A Non-Lethal Pursuit Training Pass, issued at the Captain’s discretion, will be issued for a period of up to 30 days, with an option for a 30-day renewal at the request of the Training Pass holder. This training pass will detail the timeframe and geographic scope of the training area that is acceptable to the Captain and the training pass holder. Prior to engaging in a training exercise within the limitations of the training pass, the training pass holder will communicate with a Department Sergeant with oversight of the training area. The training pass holder shall keep the Department Sergeant apprised of regular training activities, and the Sergeant shall keep the training pass holder apprised of any operational or logistical concerns or restrictions. A Department Captain may, at any time, change the geographic scope or timeframe of the training pass to address management or emergent needs, and retains the discretion to terminate a training pass. The Department Captain shall restrict training pass scope for certain Game Management Units (GMU’s) during big game hunting seasons when prudent.

Rationale: This addition allows for the agency’s discretion to limit the training pass scope in certain GMU’s during big game hunting seasons. Specifically, to address concerns that either activity could negatively impact one another. Adaptive communication and management will generate an active balance during these seasons and locations.

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- Addition: Any training pass holder engaged in training activities is required to carry either pepper spray or an air horn so that non-lethal means are available to mitigate wildlife interactions.

Rationale: As stated in the title, this program is nonlethal and prioritizes the ethical treatment of working dogs and wildlife. Pass holders may not kill or injure domestic or wild animals while engaged in the training activity unless it is an act of self-defense. This addition is to establish nonlethal methods in the case of wildlife interactions with working dogs during the training.

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- Addition: 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.

Rationale: This addition was added in response to the concerns provided during public comment. The concerns highlighted the potential for injury or death to cougar kittens during these trainings. This language accounts for best practices in dog handling, which is that handlers will not engage in pursuit if visual or track confirmation indicates the presence of kittens. This language further defines the response the handler will take if kittens are located and reporting requirements to the agency.

Summary of Public Comments Received During the Official Comment Period and WDFW Response:

WAC 220-412-130 Non-Lethal Pursuit Training Pass Program.

Staff received 263 total comments on this proposed rule. Two hundred and thirty-nine were received in written comment via email, Twenty-Three provided oral comments during the December 4 Commission hearing and one provided comment over phone to staff. Some of the respondents did not indicate if they agreed or disagreed with the proposed rule.

Written Public Comment Received:		
Total Responses	240	
In support	179	74.6%
Not In support	51	21.3%
Other	10	4.2%
Public Testimony during Dec 4 Commission Meeting:		
Total Responses	23	
In support	9	39.1%
Not In support	12	52.2%
Other	2	8.7%

Written Supporting Comments:

A total of Seventy Four percent (179) of the non-neutral online respondents indicated that they agreed with this rule change.

Written Opposing, Neutral, and Other Comments:

Twenty One percent (51) of the non-neutral online respondent disagreed with the proposed rule. Four percent of all survey respondents were neutral or did not provide an answer.

Below are some of the common comment from email:

- Re-legalize hound hunting instead
- Opposition to hound hunting and pursuit of cougars in general
- Concern for negative impacts to kittens
- A form letter suggesting circumventing the law behind banning hound hunting
- Public safety misuse by other enforcement entities
- Concern that cougars will be killed or injured

Rationale-Agency Action Regarding Comments:

Close to 75% of the public comments were in favor of the proposed rule. Those that were opposed had multiple reasons. Outlined are the most prominent reasons and WDFW's consideration below:

- Re-legalize hound hunting instead

It is currently unlawful to recreationally hunt with hounds for cougar, bear, or bobcat in the state of Washington. RCW 77.15.245 2 (a) only allows for the 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 alternative request to instead bring back hunting with the aid of dogs is outside the scope of this rule making as it would require a legislative adjustment to the RCW.

- Opposition to hound hunting and pursuit of cougars in general

WDFW understands that this topic is controversial. Working dogs and their handlers are a valuable tool that helps WDFW Police and Conflict Staff respond to dangerous wildlife incidents in regard to the public's safety. In these cases, the handlers are acting in the capacity of Agents of the State; however, opportunity for handlers to keep dogs trained to be prepared in between calls for service has not been an option in Washington State. The intent of this rule is to ensure that working dogs are available during these calls for service and that the dogs used are trained for quick and skilled action. This program is not a recreational opportunity and will be closely monitored and administered through the enforcement program.

- Concern for negative impacts to kittens

Concerns for the wellbeing of kittens and family units were common theme provided during written and public testimony. Staff worked to include additional language into the rule to provide clear 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.”

This addition was added in response to the concerns provided during public comment. The concerns highlighted the potential for injury or death to cougar kittens during these trainings. This language accounts for best practices in dog handling, which is that handlers will not engage in pursuit if visual or track confirmation indicates the presence

of kittens. This language further defines the response the handler will take if kittens are located and reporting requirements to the agency.

- A form letter suggesting circumventing the law behind banning hound hunting

Under RCW 77.15.245 Unlawful practices—Black bear baiting—Exceptions—Illegal hunting—Use of dogs—Exceptions—Penalties. (2) 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.

Furthermore RCW 77.15.245 2 (a) only allows for the 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 proposed program is not a recreational opportunity and will be closely monitored and administered through the 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).

- Public safety misuse by other enforcement entities

As defined by RCW 77.12.077(2) The department shall administer a training program to enable persons who have been selected pursuant to subsection (1) of this section to train dogs for use consistent with this section. The purpose of this program is to provide dog training opportunities using nonlethal pursuit.

In the RCW language it clearly states that this is a WDFW Department run program. Based on that language no other entity can legally create or administer this training program. Furthermore, the proposed rule defines that the program will be monitored and administered through the enforcement program within WDFW.

- Concern that cougars will be killed or injured

As stated in the title of this program and RCW 77.12.077, this program is nonlethal and prioritizes the ethical treatment of working dogs and wildlife. The purpose of this program is to provide dog training opportunities using nonlethal pursuit. Recommended additions were drafted by staff to further provide non-lethal options for those engaged in this training program.

“Any training pass holder engaged in training activities is required to carry either pepper spray or an air horn so that non-lethal means are available to mitigate wildlife interactions”.

The above recommended addition to the rule is to establish nonlethal methods in the case of wildlife interactions with working dogs during the training. Additionally, a second recommendation was included in the proposed recommended adjustments to further define firearm discharge.

“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 clarification is provided to illustrate the process if a firearm is discharged during a training activity. The training pass holder will be put on hold until WDFW Police conducts an investigation and determines why the firearm was discharged. This language was originally drafted in the Affidavit language but was added to the proposed WAC to provide a defined rule if a firearm is discharged during a training activity.

Fish and Wildlife Commission Hearing, Public Comments:

Twenty-three people commented on the proposed rule change during the Dec 4 Commission Meeting. Nine people spoke in favor of the proposed rule. Twelve comments were in opposition of the non-lethal training program.

Rationale-Agency Action Regarding Comments:

Comments received during the commission meeting were similar in content to comments that were received during the open comment period and many additionally submitted their comments in writing in addition and were addressed above.



PROPOSED RULE MAKING

CR-102 (December 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: October 15, 2020

TIME: 2:00 PM

WSR 20-21-065

Agency: Washington Department of Fish and Wildlife

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 19-16-150 ; or

Expedited Rule Making--Proposed notice was filed as WSR _____; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or

Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject) WDFW Managed Nonlethal pursuit training program

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
December 3- 5, 2020	8a.m.	Webinar	This meeting will take place by webinar. The public may participate in the meeting. Visit our website at http://wdfw.wa.gov/about/commission/meetings or contact the Commission office at (360) 902-2267 or commission@dfw.wa.gov for instructions on how to join the meeting.

Date of intended adoption: December 18, 2020 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: Becky Bennett

Address: PO Box 43200 Olympia WA 98504

Email: becky.bennett@dfw.wa.gov

Fax: 360-902-2155

Other:

By (date) December 7, 2020, at 5:00 p.m.

Assistance for persons with disabilities:

Contact Dolores Noyes

Phone: (360) 902-2346

Fax:

TTY: (360) 902-2207

Email: dolores.noyes@dfw.wa.gov

Other:

By (date) December 7, 2020, at 5:00 p.m.

Purpose of the proposal and its anticipated effects, including any changes in existing rules: This purpose of this proposal is to establish a nonlethal program within the department of fish and wildlife enforcement program for the purpose of training dogs. With the passage of Initiative 655 in 1996, voters approved a prohibition on the hunting of bear, cougar, bobcat, and lynx with dogs, with certain exceptions. The Fish and Wildlife Commission is authorized to allow the use of dogs to hunt or pursue black bear, cougar, or bobcat if there is a public safety need; to protect livestock, domestic animals, and private property; for scientific purposes; or to protect endangered species.

As the primary authority on dangerous wildlife incidents, WDFW Police frequently call upon dog handlers to assist in locating offending animals. In these cases, the handlers may be seen as acting as agents of the State and should be well trained and experienced. However, there does not exist a mechanism in Washington for handlers to keep dogs trained in between calls for service.

In order to effectively manage and train hound handlers and their dogs used for conflict response, the State Legislature in 2019 established a non-lethal pursuit training pass program. The proposed Commission rule emphasizes safe, ethical, responsible, and lawful hound handling practices as well as detection of specific wildlife species by dogs. The goals of the non-lethal pursuit training pass program include improving dog handler/Department relations, effective detection of target species when requested by the Department, and the ethical treatment of working dogs and wildlife.

This rule outlines the requirements an applicant must meet in order to qualify to join this nonlethal training program, as well as procedures for participation. A limited number of individuals will be selected and approved through an extensive application process, which includes a background check of every applicant. This program will be monitored and administered through the enforcement program.

Reasons supporting proposal: Both WDFW Police and the Wildlife Conflict specialists are often called upon to address dangerous wildlife conflict situations involving a variety of species. The issues span both the public safety and property protection spectrum. As Washington’s human population continues to expand and interact with wildlife habitats, it is expected that calls for service will continue.

Officers work with the dog handlers during these dangerous wildlife incidents, but due to the earlier established laws surrounding hound hunting in Washington, handlers have had to train their dogs outside the State to keep their dogs in fit and prime condition. As the Department relies on these handlers as necessary tools during public safety incidents Agency staff worked alongside NGOs, counties, livestock producers, and working dog handlers to draft and present RCW language during the 2019 legislative session as well as work collaboratively on the currently proposed Commission rulemaking language. This rulemaking will help to ensure that working dogs are trained for quick and skilled action when called upon by WDFW Enforcement Officers in response to public safety.

Statutory authority for adoption: RCW 77.15.245, [77.04.012](#), [77.04.013](#), [77.04.020](#), [77.04.055](#), [77.12.077](#) and [77.12.047](#).

Statute being implemented: RCW 77.15.245.2d, 77.12.077

Is rule necessary because of a:

Federal Law?

Yes No

Federal Court Decision?

Yes No

State Court Decision?

Yes No

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: This collaborative process has been developed and reviewed through a robust multi-stakeholder group consisting of WDFW Commission Members, Agriculture Organizations, Conservation Groups, County Officials, Working Dog Members, WDFW Enforcement Officers and Staff, and WDFW Wildlife Program Staff. This proposed Commission rule is the product of collective problem solving, partnership, and shared values.

Name of proponent: (person or organization) Washington Department of Fish and Wildlife Private
 Public
 Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Becky Bennett	Olympia, WA	360-701-7026
Implementation:	Becky Bennett	Olympia, WA	360-701-7026
Enforcement:	Jeff Wickersham	Ridgefield, WA	509-254-1829

Is a school district fiscal impact statement required under RCW 28A.305.135? Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Is a cost-benefit analysis required under RCW 34.05.328?

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

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

No: Please explain:

Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

- This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:
- | | |
|---|--|
| <input type="checkbox"/> RCW 34.05.310 (4)(b)
(Internal government operations) | <input type="checkbox"/> RCW 34.05.310 (4)(e)
(Dictated by statute) |
| <input type="checkbox"/> RCW 34.05.310 (4)(c)
(Incorporation by reference) | <input type="checkbox"/> RCW 34.05.310 (4)(f)
(Set or adjust fees) |
| <input type="checkbox"/> RCW 34.05.310 (4)(d)
(Correct or clarify language) | <input type="checkbox"/> RCW 34.05.310 (4)(g)
((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |
- This rule proposal, or portions of the proposal, is exempt under RCW _____.
Explanation of exemptions, if necessary:


COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

- No Briefly summarize the agency's analysis showing how costs were calculated. n/a no cost for businesses
- Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Date: October 15, 2020	Signature: 
Name: Benjamin Power	
Title: WDFW Rules Coordinator	

NEW SECTION

WAC 220-412-130 Nonlethal pursuit training pass program. (1) In order to effectively manage and train hound handlers and their dogs to be agents of the state used for cougar conflict response, the department establishes the nonlethal pursuit training pass program.

(2) The nonlethal pursuit training pass program emphasizes safe, ethical, responsible, and lawful hound handling practices as well as detection of specific wildlife species by dogs. The goal of the nonlethal pursuit training pass program includes improving dog handler/department relations, effective detection of target species when requested by the department, and the ethical treatment of working dogs and wildlife. The yearly application cost to be considered for placement on the list of screened nonlethal pursuit handlers shall be twenty-five dollars and will cover the cost of an application review and a background check. This cost will occur annually when renewing an application to be on the list of screened nonlethal pursuit handlers. The WDFW enforcement program shall determine the nonlethal pursuit program's requirements and curriculum in consultation with stakeholders including, but not limited to, working dog handlers and wildlife conservation organizations in Washington state.

(3) Working dog handlers are held to the highest ethical standards as these individuals may be asked to perform as agents of the state under RCW 77.12.077. As such, they may be ambassadors for the department and the working dog community. Criteria to be considered include the following:

(a) Currently own and train working dogs on scent detection and tracking;

(b) Maintain health records of working dogs;

(c) An active working knowledge of predator detection and pursuit training techniques;

(d) Hold a current driver's license;

(e) Up-to-date vehicle registration and vehicle insurance for any vehicle used to transport working dogs;

(f) Understanding of best practices in dog handling equipment and proper usage; and

(g) Working knowledge of terrain navigation and digital mapping equipment.

Initial approved applicants on the list of screened nonlethal pursuit handlers and individuals reapplying to be approved on the list of screened nonlethal pursuit handlers must annually submit to a criminal background check, and the department shall deny entry into the nonlethal pursuit training pass program to those applicants who have:

- Been convicted within the last ten years of any criminal offense under chapter 77.15 RCW (WDFW enforcement), 76.48 (specialized forest products), or 16.52 (animal cruelty) RCW;

- Been found to have committed, or to have paid, any infraction for a violation of chapter 77.15 RCW except recreational fishing under RCW 77.15.160, in the last ten years;

- Been convicted within the last ten years of any crime of dishonesty;

- Been convicted of any felony, or released from custody pursuant to any felony conviction, within the last ten years;

- Been convicted of, or been found to have committed, any criminal or civil violation where the department obtains a report from the citing authority that alleges the applicant was deceptive, untruthful,

or obstructed a law enforcement officer in the course of the officer's duties, other than violations of RCW 46.61.050 and 46.61.400, within the last ten years;

- Been convicted of unlawful possession of a firearm under RCW 9.41.040, or has been convicted of any felony offense and the applicant has not successfully petitioned to have the applicant's firearm rights restored, or is otherwise ineligible to possess a firearm for any reason provided in RCW 9.41.040;

- A current hunting or fishing license revocation or a current suspension of hunting or fishing license privileges in Washington or in another state.

An applicant must disclose to WDFW at the time of application whether the applicant is aware of any pending criminal charges in any municipal, state, or federal court. The department may defer approval or denial on an application until such criminal charges have been adjudicated.

The department may, based on the results of a criminal background check or based on information it has received involving active investigations or pending charges, deny an application, at its discretion, if it believes the applicant does not meet the high ethical standards of the program, or would not be a suitable state agent or ambassador for the department and the working dog community.

(4) An individual who holds a current nonlethal pursuit training pass and is found to have any of the invalidating circumstances addressed in subsection (3) of this section, shall be removed from the program and the training pass revoked. If the department learns of a new pending criminal charge or incident involving a current training pass applicant which could lead to an invalidating circumstance addressed in subsection (3) of this section, the department may suspend the training pass applicant's participation in the program until resolution of the charge or incident.

(5) Nonlethal pursuit training pass applicants will be required to complete an agency affidavit which specifies that the applicant has read, understands, and will comply with the program rules and ethical standards required of the program. This affidavit must be signed, dated, and returned along with a copy of the applicant's driver's license, current proof of vehicle liability insurance, and a copy of a valid hunting license. Submission of false or fraudulent information is grounds for removal from the program.

(6) The enforcement program nonlethal pursuit training pass program coordinator will maintain open communications with landowners and the community. The department will investigate written accusations about nonlethal pursuit program participants and determine whether such complaints have merit and/or warrant enforcement or administrative action.

(7) Any person who has been denied initial admission into the nonlethal pursuit training pass program, or renewal of his or her application to be placed on the list of screened nonlethal pursuit handlers, has the right to an administrative hearing to contest the agency action pursuant to chapter 34.05 RCW. An applicant denied a training pass may request an informal review within thirty days of receipt of the application denial. The request for an informal review shall be served on the chief of the enforcement program in writing. The chief may ask the applicant and department for additional information before ruling on the informal appeal, and shall respond to the informal appeal in writing. The applicant shall have initiated the formal appeal no later than thirty days from receipt of the notice of denial of the

training pass, or thirty days from receipt of the decision on the informal review, whichever is later. Date of receipt shall be five days after any written notice or decision is mailed to the applicant. Initial nonlethal pursuit training pass applicants who fail to submit the application fee or who submit an incomplete application will have their application returned. Denial of admission on these grounds does not trigger the right to an administrative hearing.

(8) Training program enrollment - The department will authorize no more than fifty valid training pass holders to participate in the program annually on a statewide basis.

(9) Prior to engaging in any nonlethal pursuit training activity, a member of the nonlethal pursuit training pass program shall obtain from the department captain with oversight responsibility for the area proposed to be used for training a nonlethal pursuit training pass, which will be in via paper or electronic format. A nonlethal pursuit training pass, issued at the captain's discretion, will be issued for a period of up to thirty days, with an option for a thirty-day renewal at the request of the training pass holder. This training pass will detail the time frame and geographic scope of the training area that is acceptable to the captain and the training pass holder. Prior to engaging in a training exercise within the limitations of the training pass, the training pass holder will communicate with a department sergeant with oversight of the training area. The training pass holder shall keep the department sergeant appraised of regular training activities, and the sergeant shall keep the training pass holder appraised of any operational or logistical concerns or restrictions. A department captain may, at any time, change the geographic scope or time frame of the training pass to address management or emergent needs, and retains the discretion to terminate a training pass.

(10) Training pass holders will be allowed to have up to four immediate family members present while participating in a training exercise with a nonlethal pursuit training pass. "Immediate family member" shall be limited to spouses and domestic partners, children and step-children, siblings, parents, and step-parents. Additionally, the owner of real property who has granted permission to the training pass holder to use said lands for a training exercise with a nonlethal pursuit training pass may be present with the training pass holder or may designate a representative in writing. Corporate landowners may designate security personnel or contractors to accompany a training pass holder participating in a training exercise with a nonlethal pursuit training pass. A department sergeant with oversight of the training area may authorize, in advance, additional observers of a training pass holder participating in a training exercise with a nonlethal pursuit training pass.

(11) Training pass holders shall maintain a logbook of training activities under the nonlethal pursuit training program. Logbooks shall be made using a template made by the department to be uploaded online or downloaded and printed. Entries in the logbook shall include:

(a) Training pass holder's name, names of those accompanying or observing the training exercise, and number of dogs trained or participating;

(b) Date and location of the training, including the names of any roads traveled, trails traveled, or routes taken. The entry shall specify the owners of any land traversed;

(c) If any cougars were detected, the logbook must contain the corresponding GPS coordinates; and

(d) The discharge of any firearms, identification of the firearms, and the person responsible for the discharge.

Logbooks are required to be completed for each training trip before leaving the field. Logbook pages must be provided to the department through an online reporting system or postmarked within ten days following any calendar month in which the training pass activity took place.