



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 WA Zip Code [REDACTED]

Telephone [REDACTED] Email [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/RClst.htm>.

INFORMATION ON RULE PETITION

Agency responsible for adopting or administering the rule: _____

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

The subject (or purpose) of this rule is: See Attached

The rule is needed because: See Attached

The new rule would affect the following people or groups: 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): _____

December 19th 2022

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 2023 and future year(s) Spring Black Bear Management Hunts"

Spring Black Bear Management Hunts were not excluded in the recent WDFW Commission Spring Bear Policy vote.

Spring Black Bear Management Hunts would be considered if a plan was proposed.

The WDFW Commission did not ask staff to prepare a 2023 plan or proposal – only if necessary to address some issue.

The reason for this Petition / Rule Request can be read in an email sent to me by WDFW Commissioner John Lehmkuhl which he stated he sent me at the request of Eric Gardner.

The email he sent to me was also cc'd by Commissioner Lehmkuhl to Eric Gardner and Anis Aoude.

Lehmkuhl, John F (DFW) <John.Lehmkuhl@dfw.wa.gov>

To:

Brad Thomsen

Cc:

- Gardner, Eric S (DFW) <Eric.Gardner@dfw.wa.gov>;
- Aoude, Anis (DFW) <Anis.Aoude@dfw.wa.gov>

Tue 12/13/2022 10:20 AM

Brad, Eric Gardner asked me to clarify my message (below) to you. I guess I did not proof read it well enough. What I meant to say is that management hunts in the spring were **NOT** excluded, that is, they would be considered if a plan was proposed. Creating a plan and proposing it for approval is standard operating procedure to address management issues, I think. Plans could be annual or not, but we were not asking staff to prepare a 2023 plan or proposal – only if necessary to address some issue. Sorry for the confusion.

John

John Lehmkuhl, Ph.D.
Commissioner
WA Fish and Wildlife Commission

“The rule is needed because:” The WDFW Commission needs to begin Rule Making now for the 2023 and future year(s) Spring Black Bear Management Hunts.

Protect loss of neonates, minimize timber damage, and keep the WDFW in line with their mandate to Preserve, Protect, Perpetuate and Manage Wildlife.

“The new rule would affect the following people or groups:” Those who understand the history, purpose and role of Spring Black Bear Management Hunts as one of the three pillars of Spring Black Bear Management in Washington State. Hunters, Timber Interests, Wildlife Viewing, General Public.

I refer my reasons for the Commission to immediately begin rule for the 2023 and future year(s) Spring Black Bear Management Hunts as being found in the book ‘Black Bear of Washington’ written by Richard J Poelker and Harry D Hartwell. Published by the Washington State Game Department. Focus on Section III of the book. The section titled ‘Management’

The reason for a Spring Black Bear Management Hunt has always been to alleviate black bear timber damage.

Spring Black Bear damage is not a passing phase in forestland management.

Bears eat Sapwood.

Sapwood use is found to be highest in the spring.

Spring Black Bear Management has always been addressed by:

Boot Hunting

Control Operations

Management Regulations

The book “Black Bear of Washington” is the result of “The Cooperative Black Bear Study, Federal Aid in Wildlife Restoration Project W-71-R, was a joint research effort by several state, federal and private agencies. Project leadership was provided by the Washington Department of Game, Contributing agencies were the Washington Department of Natural Resources, Washington Forest Protection Association, U.S. Fish and Wildlife Service, U.S. Forest Service,

Weyerhaeuser Company, Washington State University and the University of Washington. Project headquarters was located at the Forest Land Management Center, Department of Natural Resources, Olympia, Washington". (pg. iv, Black Bear of Washington)

The WDFW Commission cancelled the 2022 Spring Bear Hunting Season.

I believe the book "Black Bear of Washington" is the most comprehensive multi agency Black Bear Study ever conducted. That book, that multi year study, science and summary, including the many local, state, federal and private entities involved in that study make the case for the The WDFW Commission to immediately begin Rule Making now for the 2023 and future year(s) Spring Black Bear Management Hunts.

Regarding the Cooperative Black Bear Study:

"... it is a final report of the Black Bear Study, Federal Aid in Wildlife Restoration (Pittman-Robertson) Project W-71-R. This (is a) cooperative study begun in 1963 by state, federal and private agencies to investigate the problem of black bear damage to coniferous forests and gain new information with regard to black bear biology and populations:"

This Petition can serve to correct issues regarding:

- Priority points earned by previous permit applicants
- The forest protection tool of Spring Black Bear Management Hunts.
- Correct the biological impact to ungulate populations caused by the loss of the season
- Address lethal removal of bears as described in the document 'Bear Timber Damage 2022 FAQ"
- Address impact the loss of the Spring Bear Hunting Season had on protecting public timber which is the primary funding source of Washington States public schools, universities, state mental hospitals, and other institutions and to help fund local services in many counties.
- Bring back a balanced approach to bear management during the vital spring fawning/ calving season.
- Removal of the Spring Bear Hunting Season, as was done, has eroded trust in the commission, impacted WDFW management plans, reduced WDFW revenue, and resulted in confusion.

In 2022 the WDFW department's expert biologists supported the season and included the reasons for the Spring Black Bear Hunting Seasons continuation in their proposal.

"Washington Department of Fish and Wildlife / Fish and Wildlife Commission Presentation Summary Sheet / Meeting date: 11/19/2021 / Agenda item: 2022 Spring Black Bear Special Permits – Decision / Presenter(s): Stephanie Simek, Ph.D. Carnivore, Furbearer, Game Bird Section Manager, Wildlife Program / // this document in its entirety can be found at /

Previous Meetings / 2022 / January 21, 2022 – Special Commission Meeting / Agenda / Petitions / pg 17 / Background summary /

“The proposal is to recommend the spring black bear special permit hunts for the 2022 season. The proposal meets the Commission’s mandate to maximize the public recreational hunting opportunities. Further these special permit hunts allow WDFW to geographically distribute hunters and resulting harvest as compared to the general fall black bear season. This distribution helps to satisfy the department’s mandate to preserve, protect, perpetuate, and manage wildlife. These hunts also use harvest as a tool to assist with mitigating bear timber damage and minimizing human-bear interactions or where ungulate neonate survival is low, while providing additional recreational opportunities. The spring black bear special permit season is designed to target specific areas.”

For Brevity here I will be paraphrasing from pages 142 – 144 of ‘Black Bear of Washington’ section ‘Study conclusions’;

In Washington State Black Bear damage is severe enough to have serious economic impact in affected areas. Control Operations are expensive to forest industry, distasteful and wasteful of a game resource. The primary objective of the Cooperative Black Bear Study was thus established: to develop techniques for management of black bear in Washington.

Sapwood use was found to be highest in the spring following the bear emergence. This use correlated with a relatively low abundance of other preferred food items early in the growing season. Analysis of tree sapwood from damage and non damage areas revealed no differences to which bear damage could be attributed. Information on the age of trees receiving damage, bear densities in damage areas and amounts of available forage support the thesis that bear damage results, at least in large measure, from existence of a high bear density in an area of maturing timber stands with declining carrying capacity.

Bear damage is not a passing phase in forestland management. With increasing dependence on tree farming operations to sustain the timber industry, land will continually be entering the stage where it has greater potential for bear damage.

Increased Sport Hunting Pressure in specific bear damage areas has a significant impact on bear timber damage management.

The Spring Black Bear Management Hunts will provide a balanced approach during the vital spring fawning / calving season.

It helps correct the biological impact to ungulate populations.

Minimizes human-bear conflict interactions.

It allows WDFW to geographically distribute hunters and resulting harvest as compared to the fall black bear season.

The Spring Black Bear Management Hunts will allow WDFW to geographically distribute hunters where ungulate neonate survival is low.

The Spring Black Bear Management Hunts meets the Commission's role in addressing Spring Black Bear issues.

There is arguably no greater expert on the issue of Black Bear Management than Ralph Flowers.

For those not familiar with Ralph Flowers, for 20 years he was employed as a Forest Protection Agent, spending more than 2,000 working days – in addition to much of his own time – hunting for bear in his job as Forest Protection Agent for the Washington Forest Protection Association.

He concluded amongst other things that there are areas in Washington State where Black Bears do considerable damage to trees, girding and killing trees and reducing the habitat's ability to support other wildlife.

In parts of Washington State bears subsist principally on the cambium layer of trees during certain times of year – and one bear can destroy as many as 60 trees per day.

I want to quote here from Robert P. Mathews, Former Director, Forest Protection, Washington Forest Protection Association:

“Washington's forestland owners and managers recognize that the bear is an important big-game animal and must be retained as a viable component in the forest ecosystem. Only a small percentage of the bear population is out of balance with its general habitat and food supply, thus leading to tree damage and the necessity for control. A combination of factors which lead to bear damage will probably occur as long as forest managers continue to intensify their efforts to grow repeated crops of trees.”

- Re read the above quotes from Robert Mathews. A single Black Bear in Spring can destroy as many as 60 trees per day.
- Per USDA APHIS | Bear Damage and Management, “a single bear can peel bark from as many as 70 trees per day.”
- (https://www.aphis.usda.gov/aphis/ourfocus/wildlifedamage/programs/nwrc/SA_Animals/CT_Bear)
- According to the website fritchmill.com/current-log-price-sheet.aspx is showing Douglas Fir logs going for \$825 and Cedar logs going for as much as \$1350 each.
- According to the https://www.dnr.wa.gov/publications/psl_ts_jan21_logprices.pdf website Douglas Fir logs going for as much as \$1040 per log, Whitewood averaging \$621 per log, Cedar going for as much as \$2,250 per log. Publish date of the document 02/1/2021/
- There are financial consequences of canceling the Spring Bear Hunting Season which was implemented to combat Black Bear Timber Damage.

- I want the Commissioners who are, by their voting to cancel the Spring Bear Hunting Season, to see in real dollars and cents, the direct funds they are allowing to be destroyed which fund Washington States public schools, universities, state mental hospitals, and other institutions and to help fund local services in many counties.
- This is not an issue, of 'Oh well, the State will just raise taxes and find other sources of funding' this is something more diabolical. Not since old time war times, does our society accept the intentional destruction of crops.
- Doing just spit ball math, one bear destroys 70 trees per day in the Spring to eat the cadmium layer of a tree thus destroying it. Factor an average of \$1,000 per tree/log and you quickly see one bear causing \$70,000 crop damage per day.
- I don't care if people like or hate hunting, all people will complain if they realize Commissioners are actively causing that much financial damage to a crop this State relies upon to fund institutions to benefit our most vulnerable.
- I suspect it's been awhile since some of you have been off the pavement and actually went into a tree farm to see the magnitude what of a single bear can actually do in just one stand of trees. We are not talking about wild herds of delinquent black bears rampaging for fun, what we are talking about is a black bear that is hungry. Bears girding trees is a direct result of more bears than the habitat can carry.

Please consider the following:

- Black Bears in the Spring will still be killed in large numbers whether you bring back the Spring Black Bear Hunting Seasons or not.
- The wishes of the WDFW Commission have no bearing (pardon the pun) on the authority and powers of the Federal Farm Bill.
- Timber Farms / Timber Companies have many options outside of a Spring Bear Hunting Season as being authorized by The Commission to deal with getting Timber Damage Black Bears killed.
- The WDFW Commission has no bearing over whether or not Timber Companies / Tree Farms bring in Tribal Hunters to kill Black Bears in the Spring.
- The WDFW Commission has no bearing over the Timber Companies and Tree Farms from simply using the authority of USDA Aphis Wildlife Program to kill Black Bears causing damage on Tree Farms under the Federal Farm Bill.
- (https://www.aphis.usda.gov/aphis/ourfocus/wildlifedamage/sa_program_overview/ws-legislation)
- Read the section "Legal Authorities of Wildlife Services" as per the above link. They do not answer to WDFW Commissioners.

"The WS Program's primary statutory authorities are found in two acts of Congress:

- The Act of March 2, 1931, (46 Stat. 1468-69; 7 USC §§ 8351-8352) as amended; and

- The Act of December 22, 1987 (Public Law No. 100-202, § 101(k), 101 Stat. 1329-331, 7 USC § 8353).

The Act of March 2, 1931, as amended (7 U.S.C. § 8351 – Predatory and other wild animals and § 8352 – Authorization of expenditures for the eradication and control of predatory and other wildlife animals), authorizes the Secretary of Agriculture to conduct a program of wildlife services with respect to injurious animal species and take any action the Secretary deems necessary in conducting the program. The Secretary of Agriculture has delegated this authority to WS.”

- It is a Bad Look for the WDFW Commission to cancel the Spring Black Bear Hunting Season when we all know about the proceeds of Timber Sales on DNR Lands in the State of Washington.
- “DNR sells state trust land timber to earn income to build our public schools, universities, state mental hospitals and other institutions and to help fund local services in many counties.”
- (<https://www.dnr.wa.gov/programs-and-services/product-sales-and-leasing/timber-sales>)
- Who would want to intentionally see Black Bears destroying Trees that are being grown as a crop (hence the term ‘Tree Farm’ exists) and thus take away money that funds public schools, universities, state mental hospitals and other institutions and to help fund local service in many counties?
- Much of the lands where Spring Bear Hunting Season permits were authorized are on DNR Lands.
- Let’s be honest here. Cancelling the Spring Bear Hunting Season was all about Virtue Signaling and pushing the agenda of a small group of the population. We have all seen the statistics that less than 5% of the population at large is anti hunting and about the same are vocally pro hunting. Most of the population just don’t care. They have other things going on in their lives that take up their time and attention. Even fewer are even aware that Spring Bear Hunting / Timber Damage is even happening.
- While some on the Commission may harbor personal feeling about large institutional Timber Companies, I want to ask directly if those Commissioners also support decreasing the income to schools, mental hospitals, and other services in our counties.
- For in cancelling the Spring Bear Hunting Seasons which has always been about mitigating Timber Damage on Private Lands and Public Lands, you are signaling you support destroying crops that fund our most at need public institutions.
- We protect the Hops and Grapes growing in the Yakima Valley as they are crops. Go there sometime. It is beautiful habitat. Look around. Ask yourself why you see absolutely no wildlife in that valley. It’s because as a society we protect our crops. It’s not always pretty. It’s not always something everyone wants to look at, but as a society we have made a collective value judgement we will protect our crops. Trees are a crop. They have value to our society and our communities.

- Allowing for the intentional destruction of those crops by a predator that can and should be managed is on you, the 9 Commissioners.
- Do what is right for Conservation. Do what is right for funding our public schools. Do what is right for funding our mental institutions and to help fund local services in many counties.

“These diverse forests across the state offer many ways to generate income while providing fish and wildlife habitat and recreation and educational opportunities for the public.”

Pandering to a small vocal fringe anti hunting / anti bear hunting section of the population does no good.

There are Federal Laws in place that are more powerful than the WDFW Commission.

The Black Bear Damage in the Spring on the Tree Farms will be dealt with.

Black Bears will be killed.

But who really wants to be on the side of intentionally allowing the destruction of a farm crop that financially supports our schools and mental institutions?

The answer is clear.

We saw the 5 Commissioners vote to end one of the three historical tools our State has used for over a half Century to protect Timber.

That very Timber that funds our Washington States public schools, universities, state mental hospitals, and other institutions and to help fund local services in many counties.

Spring Black Bear Management issues also involve:

- Livestock losses due to Black Bear predation
- Beehive losses due to Black Bear predation
- Losses by honey producers
- Losses by Apple Orchard owners
- Property damage to private citizens property
- Black Bear over predation on elk calves
- Black Bear over predation on deer fawns
- Bear Human conflict
- Urban sprawl into historical Black Bear Habitat
- Loss of Black Bear habitat on a large spread scale.
- The over predation of Black Bears in the Spring on the vulnerable Blue Mountain Elk Herd.

I look forward to the Commission scheduling and approving the Petition:

“immediately begin Rule Making for the 2023 and future year(s) Spring Black Bear Management Hunts”

Thank-you.



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 15th and are not usually issued after June 30th 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.