

**WSR 23-19-042
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 19-07—Filed September 13, 2023, 1:52 p.m.]

Continuance of WSR 23-17-125 filed on August 21, 2023.

Preproposal statement of inquiry was filed as WSR 19-06-030 on February 28, 2019.

Title of Rule and Other Identifying Information: WAC 220-440-210 Black bear timber damage depredation permits.

Hearing Location(s): On October 27-28, 2023, at 8:00 a.m., hybrid and at the Natural Resources Building, 1111 Washington Street S.E., Room 172, Olympia, WA 98501. Information on how to register to testify at the public hearing is available at <http://wdfw.wa.gov/about/commission.meetings>, or contact the fish and wildlife commission (commission) office at 360-902-2267.

Date of Intended Adoption: On or after November 17, 2023.

Submit Written Comments to: Wildlife Program, P.O. Box 43200, Olympia, WA 98504, email black-bear-timber-damage@PublicInput.com, fax 360-902-2162, <https://publicinput.com/black-bear-timber-damage>, comment by phone 855-925-2801, project code 5474, SEPA comment TimberDamageRules@PublicInput.com, by October 27, 2023.

Assistance for Persons with Disabilities: Contact Title VI/ADA compliance coordinator, phone 360-902-2349, TTY 1-800-833-6388 or 711, email Title6@dfw.wa.gov, <http://wdfw.wa.gov/accessibility/requests-accommodation>, by October 27, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments to WAC 220-440-210 Black bear timber damage depredation permits, if adopted, would repeal an existing rule and replace it with a new rule to provide a permitting process to issue permits to persons to lethally remove black bears to reduce damage to commercial timber. Peeling and consuming tree parts by black bears often results in permanent damage or death to the tree. This damage results in a financial loss to the tree owner. The proposed rule, if adopted, would identify how permits are applied for, applications are reviewed and issued or denied, conditioned, and administered. A black bear timber damage permit issued under the proposed rule would allow a person to remove one or more black bears as conditioned on the removal permit.

The proposed rule, if adopted, would not apply to federal employees and agents while acting in their official capacities for the purpose of protecting private property.

Reasons Supporting Proposal: A CR-101 was filed on February 28, 2019, when the Washington department of fish and wildlife (WDFW) began considering revisions to WAC 220-440-210 when it was challenged in a lawsuit. The court of appeals eventually concluded that current text in WAC 220-440-210 exceeded WDFW's statutory authority. On March 18, 2023, the commission voted in response to a rule making petition to initiate rule making to amend WAC 220-440-210 Black bear timber damage with a proposal to initiate rule making on black bear timber damage. Black bear timber damage removal permits are a tool to assist landowners with removal of bears causing timber damage in the spring of the year. The Washington state black bear population is robust and an annual spring permitting process for bear removals is sustainable. WDFW is proposing a rule that includes a process for application for permits and for review and issuance of permits. The proposed rule in-

cludes a prohibition on the harvest of offspring and females with offspring that would minimize the potential of orphaning cubs.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.055, 77.12.047, 77.36.030, 77.08.030, 77.15.410, and 77.15.750.

Statute Being Implemented: RCW 77.04.012, 77.04.055, 77.12.047, 77.36.030, 77.08.030, 77.15.410, and 77.15.750.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Eric Gardner, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2515; Enforcement: Steve Bear, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2373.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

September 13, 2023

Scott Bird

Rules Coordinator

OTS-4870.2

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-440-210 Black bear timber damage depredation permits—Requirements, restrictions, and issuance. (~~This section applies to any person participating in a director-authorized black bear timber depredation hunt pursuant to RCW 77.12.240 or 77.15.245.~~

~~(1) Definitions: As used in this section and in the context of bear depredation removals for damage to timberlands, the following definitions apply:~~

~~(a) "Damage to timberlands" means there is evidence that bears have damaged private commercial timber that is confirmed through criteria outlined by the department.~~

~~(b) "Removal" means the act of killing one or more bear.~~

~~(2) Black bear removal criteria:~~

~~(a) A landowner or the landowner's designee may submit a request for removal to the department following the procedures established by the department.~~

~~(b) Areas permitted for black bear timber depredation action must have confirmed bear caused timber damage as defined in criteria developed by the department.~~

~~(c) The department will verify reported damage.~~

~~(d) The department will consider forest management objectives and shall ensure bear removals are consistent with population management objectives.~~

~~(3) Hunter selection:~~

~~(a) Landowners or the landowner's designee may only select hunters authorized by the department to participate in a black bear timber depredation removal effort on their property.~~

~~(b) The landowner or the landowner's designee and the hunters participating in the removal will be identified as permittees on permits issued for bear removal.~~

~~(4) Permit required for participation in bear removal:~~

~~(a) If approved for a bear removal action, the department will issue a permit for bear removal. The approved selected hunter(s) must be in possession of the bear timber depredation permit while conducting the removal.~~

~~(b) Only hunters whose names appear on the permit may participate in the black bear timber depredation removal.~~

~~(5) General requirements:~~

~~(a) Removals must be reported within twenty-four hours of take as prescribed in the black bear depredation permit.~~

~~(b) All harvested bears must be disposed of as conditioned on the permit.~~

~~(c) Within seven days after harvest, the permittee must submit all animals, parts of animals and all permit materials as prescribed in the black bear timber depredation permit. If a bear is not harvested under the bear depredation permit and the permit expires, the permittees must return all permit materials to the department within seven days of expiration. Failure to comply with this subsection may render the permittee(s) ineligible for the next year's black bear depredation permit as determined by the department.~~

~~(d) The black bear timber depredation permit belongs to the state of Washington. A violation of any condition of the permit may result in revocation of the permit and may render the permittee(s) ineligible for future black bear timber depredation permits as determined by the department.~~

~~(e) A violation of subsection (4) or (5) of this section is punishable under RCW 77.15.245, 77.15.410, or 77.15.750, depending on the circumstances of the violation.)~~ (1) Purpose. The purpose of the black bear timber damage permit is to reduce damage to commercial timber caused by black bears peeling and consuming tree parts resulting in permanent damage or death to the tree. A black bear timber damage permit allows a person to remove one or more black bears as conditioned on the permit. This section does not apply to federal employees and agents while acting in their official capacities for the purpose of protecting private property.

(2) Black bear timber damage definitions. As used in this section and in the context of black bear damage removals for damage to commercial timber, the following definitions apply:

(a) "Commercial timber" means trees that are grown for wood or paper product production where the land for growing is designated as forestland under RCW 84.33.130, or, as determined by WDFW meets the definition listed in RCW 84.33.035(5).

(b) "Timber damage" means there is black bear damage evidence on private commercial timber from springtime of the current calendar year.

(c) "Removal" means the act of killing one or more black bears.

(d) "Use of bait" means the use of a substance placed, exposed, deposited, distributed, scattered, or otherwise used for the purpose of attracting black bears to an area where one or more persons hunt or

intend to hunt them. Bait does not include supplemental feeding in prior years.

(e) "Supplemental feeding" means the establishment and operation of black bear feeding stations, solely to prevent damage to commercial timber.

(f) "Use of dogs" means the use of one or more dogs for hunting under a black bear timber damage permit, or the possession of any dog while in the field under such permit.

(g) "Designated hunter" means a person who is named in a permit to hunt a black bear on behalf of the timber owner.

(3) **Permit conditions.**

(a) All permits issued under this section will be subject to the following conditions:

(i) Permittees and designated hunters must only use the lawful methods and implements allowed for hunting black bears in a general bear season;

(ii) Black bears retained for personal use under a permit count toward the annual black bear bag limit;

(iii) Black bears accompanied by cub(s) shall not be removed;

(iv) The use of bait or use of dogs in exercising the timber damage permit is prohibited;

(v) A black bear timber permit does not authorize trespass;

(vi) The permit is not valid on state or federally owned lands;

(vii) Supplemental feeding must cease, and all visible feed on the ground or in containers must be removed within the permit's designated damage hunt area boundary no later than January 1st of the permit year;

(viii) If the permit's designated damage hunt area is in a GMU located in grizzly bear recovery areas, as identified by the department, permittees and designated hunters must carry proof of successfully completing the annual WDFW online bear identification test or equivalent test from another state;

(ix) Permittees and designated hunters must be identified on, and possess the black bear timber damage permit, or a true copy of the valid permit at all times and in places that black bears are being hunted;

(x) Removals must be reported within 24 hours of taking a bear in accordance with the procedures established in the permit;

(xi) An access or other fee may not be charged to any designated hunter using a bear timber damage permit. Requiring a fully refundable key return deposit is not prohibited;

(xii) A black bear timber damage permit is only valid when signed by the permittee, any designated hunter, and the department permitting representative. Any designated hunter named in the permit must also sign the permit in order to hunt under the permit;

(xiii) The black bear timber damage permit belongs to the state of Washington and may not be transferred or sold;

(xiv) A violation of any condition of the permit may result in revocation of the permit and may render the permittee(s) ineligible for future black bear timber permits as determined by the department.

(b) Based upon WDFW's evaluation of the permit application materials and local environmental conditions, the department may establish permit-specific conditions in individual permits including, but not limited to:

(i) The time, manner, and place the permit is valid to remove one or more black bears;

- (ii) The identity of the designated hunters permitted to hunt under the permit;
 - (iii) Requirements for final disposition of the black bear carcass, as a whole or any black bear parts;
 - (iv) The number of black bears that can be removed under the permit; and
 - (v) Procedures for reporting of any removals, including submission of biological samples and reporting documents.
- (4) Applying for a black bear timber damage permit.**
- (a) An applicant must complete and submit an application using the current application form to the department's wildlife conflict section manager (or designee);
 - (b) A complete permit application package must contain the following:
 - (i) Name, age, phone, and email for the applicant;
 - (ii) List the timber owner and relationship of the applicant to the timber owner;
 - (iii) Name, contact information for any proposed designated hunters and a signed agreement that if a permit is issued, the designated hunter would be acting under the direction of and on the applicant's behalf;
 - (iv) Photos of current timber damage from the site where the permit is being requested;
 - (v) GPS coordinates for the documented timber damage on the site;
 - (vi) A map denoting the proposed permit area, the relative locations of documented timber damage, and the distance(s) and direction(s) to any known continuing supplemental bear feeding sites;
 - (vii) An attestation that supplemental feeding has not occurred within the area that the applicant is requesting to hunt within since January 1st of the current year, and that no feeding is occurring within the proposed permit boundary; and
 - (viii) Any additional information that WDFW determines is necessary to make the required determinations in subsection (5) of this section and to determine appropriate individual permit conditions under subsection (3)(c) of this section.
 - (c) The applicant must contact the WDFW wildlife conflict specialist at the appropriate geographic department regional office to arrange for property access for a department representative to visit the site and verify timber damage;
 - (d) The applicant may provide additional supporting information as to the extent of damage if the department proposes restrictions on a requested permit location or timing; and
 - (e) If the applicant seeks a permit in GMUs located in grizzly bear recovery areas, as identified by the department, the applicant and the proposed designated hunters must successfully complete the annual WDFW online bear identification test or equivalent test from another state and carry proof of successful completion.
- (5) WDFW required determinations.** Before the department issues a permit, the department's wildlife conflict section manager (or designee) must find:
- (a) The permittee has submitted a complete application and completed all steps in the application process;
 - (b) The applicant is at least 18 years of age and owns, is employed by, or leases commercial timber;
 - (c) Any proposed designated hunter, other than the applicant, possesses a valid unexpired Washington bear hunting license and tag;

(d) Reasonable belief that timber damage will continue if a permit is not issued; and

(e) Permit issuance shall not impair the department's ability to meet population objectives.

(6) **Permit denials.** The department may refuse to issue a black bear timber damage permit to an applicant if:

(a) Within the last year of the date of the application the applicant:

(i) Failed to follow the conditions of a prior black bear timber permit;

(ii) Failed to report removal success from a prior permit;

(b) The application fails to meet any of the above application requirements for a permit;

(c) The applicant did not allow public hunting access during the general black bear hunting season within the hunting season immediately prior to the permit request; or

(d) The department determines the requested permit would create a safety risk and/or a conservation concern.

(7) **Permittee-requested permit amendments.** A permit may not be changed, or altered without prior approval by the department. A permittee may submit a request in writing for permit amendments. These changes, if approved by the department's wildlife conflict section manager (or designee) in writing, may include:

(a) Change, or addition of designated hunter;

(b) Change to any geographic area; and

(c) Change to any permit-specific conditions developed pursuant to subsection (3) (b) of this section.

(8) **Permittee-requested permit renewal.** A permittee may submit a request in writing to the department's wildlife conflict section manager (or designee) for permit renewal. The permittee must submit the following documentation at least five days prior to the permit expiration date:

(a) A current, completed black bear timber damage permit application form with the updated information; and

(b) Documentation demonstrating new or continuing timber damage at the site.

(9) **Permit revocation.** The department may revoke a black bear timber damage permit for the following reasons:

(a) Failure to follow any of the conditions of a black bear timber permit;

(b) The department discovers an overarching safety concern for the permit area;

(c) The department discovers a conservation concern from continued use of the permit; or

(d) The department discovers false information was provided when the person originally applied for the permit.

(10) **Appeals.** For any permittee or applicant whose permit is denied, revoked, or modified under this section wishing to challenge a permitting decision, the provisions of this subsection shall apply.

Informal resolution:

(a) If the permittee or applicant would like to discuss a department permit denial, revocation, or modification, they may request a meeting by notifying the department wildlife conflict section manager in writing within 10 days of receiving the notice of department action;

(b) A department representative and the permittee or applicant will meet and attempt to come to mutual resolution;

Formal resolution:

(c) If the parties do not reach a resolution through informal discussions, or the permittee or applicant wishes to appeal the department's permit denial, revocation, or modification, they may request an administrative hearing within 30 days of the decision to appeal the department's action. The department will administer such appeals in accordance with chapter 34.05 RCW;

Manner and content of request for an administrative hearing. Each request for adjudicative proceeding shall substantially comply with this subsection.

(d) The request shall be in writing;

(e) The request shall identify the order that the person seeks to contest. This can be done by reference to the number of the order, by reference to the subject and date of the order, or by reference to a copy of the order attached to the request;

(f) The request shall state the grounds upon which the person contests the order. If the person contests the factual basis for the order, the person shall allege the facts that the person contends are relevant to the appeal; and

(g) The request shall identify the relief that the person seeks from the adjudicative proceeding by specifying whether the person asks to have the order vacated, or provisions of the order corrected.

(11) A violation of this section is punishable under the appropriate statute, depending on the circumstances of the violation, including RCW 77.15.160(6), 77.15.410, 77.15.245, and 77.15.750(1).

(12) Nothing within this section limits the department in the exercise of its existing lawful authority to manage black bears for research, safety, protection of property from damage, including timber damage, or any other management purpose.

[Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), recodified as § 220-440-210, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.047, 77.12.240, 77.12.320, 77.12.150, 77.15.245, and chapter 77.36 RCW. WSR 16-04-066 (Order 16-18), § 232-36-320, filed 1/28/16, effective 2/28/16.]