

WSR 21-10-064
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Filed April 30, 2021, 3:49 p.m., effective May 31, 2021]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The fish and wildlife commission approved new rule language that establishes the department's nonlethal pursuit training pass program in order to effectively manage and train hound handlers and their dogs to be agents of the state in responding to cougar-human conflict. The new rule language requires that an applicant meet certain criteria in order to qualify for joining this nonlethal training program, as well as procedures for participation once in the program. 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 is monitored and administered through the department's enforcement program.

Citation of Rules Affected by this Order: New WAC 220-412-130 Nonlethal pursuit training pass program.

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.

Adopted under notice filed as CR-101 filed as WSR 19-16-150 on August 7, 2019; CR-102 filed as WSR 20-21-065 on October 15, 2020.

Changes Other than Editing from Proposed to Adopted Version: Six changes were considered and adopted by the fish and wildlife commission and included the following:

(a) An additional section, subsection (4), proscribes what shall occur following the discharge of a firearm during a training session: "If a firearm is discharged at any point during a training activity, the training pass granted pursuant to subsection (11) shall be placed on hold until reinstated by the department captain or training area sergeant. Before a training pass may be reinstated or reissued, WDFW Police shall investigate the circumstances of the discharge to determine if it was unlawful or a result of not meeting the best practices of dog handling." The adopted amendment clarifies how the training pass holder will be temporarily unable to engage in any training opportunities until Washington department of fish and wildlife police conducts an investigation and determines why the firearm was discharged. This language and protocol were originally included in the affidavit of conduct that any participant would be required to read, sign, and abide by. But the Commission wished to emphasize the protocol following a firearm discharge by including it in the rule, rather than only in the affidavit.

(b) An additional section, subsection (5), addresses requirements for a participant who purchases a cougar tag: "A nonlethal pursuit training pass program participant who purchases a cougar harvest tag in Washington state cannot fill a cougar tag seventy-two hours before or after a training exercise." The adopted amendment mitigates a concern that a training pass holder will utilize the program to enhance their personal cougar hunting opportunities by seeking out cougar as part of a dog-handling exercise, then returning to the location without dogs to hunt. The nonlethal pursuit training program is not intended to aid recreational hunting in any way. The added requirements are consistent with the seventy-two hour cougar harvest reporting process, which requires the hunter to report their cougar harvest within seventy-two hours.

(c) The addition of geographic limitations of training passes, subsection (10): "Training passes issued by the department for training activities shall be geographically limited to no more than nine training passes at a time per WDFW region, and no more than three training passes at a time per enforcement detachment." The adopted amendment responds to public testimony expressing concerns that the program would concentrate training pass holders and training activities in certain areas of the state. The department considered the public concerns and suggested the addition, recognizing that a concentration of training pass activities could overwhelm enforcement staff in those areas approving and overseeing trainings. Further, the recommended change embraces the need to disperse working dog handlers statewide and have dog handlers familiar with the variety of regions in Washington, as the department's need for working dog handlers occurs statewide. The approved language in the rule provides an "up to" number to generate a ceiling or cap per region and detachment. This should spread training activity more evenly across the state and improve the quality of oversight by department staff.

(d) The addition of restriction of training passes for certain GMUs, subsection (11): "The department captain shall restrict training pass scope for certain Game Management Units (GMUs) during big game hunting seasons when prudent." The adopted amendment gives the department discretion to limit the scope of training pass activities in certain GMUs during big game hunting seasons, a concern raised by some public comments and commissioners. Specifically, this change addresses concerns that recreational hunting and training pass activities could overlap and prove not to be compatible. With this discretion and flexibility, the department can use adaptive communication and management to generate an active balance between these different uses, hunting and nonlethal pursuit training, and maintain that balance and public safety during these seasons and in these locations.

(e) The additional requirement that training pass participant carry pepper spray or an air horn, subsection (12): "Any training pass holder engaged in training activities is required to carry either pepper spray or an air horn so that nonlethal means are available to mitigate wildlife interactions." The adopted amendment further explains the nonlethal pursuit training pass program is nonlethal and prioritizes the ethical treatment of working dogs and wildlife. Training pass holders may not kill or injure domestic or wild animals while engaged in the training activity, unless necessary for self-defense. There are inherent risks in wildland activities involving big game and wildlife, and therefore a need for personal protection—public comments and the commission recognizes this. This addition does not just encourage, but requires effective nonlethal tools be available to any program participant for their protection in the case of wildlife interactions with working dogs during the training.

(f) An additional section, subsection (14), prohibiting a training pass holder from pursuing kittens or cougars with kittens: "As a best practices in dog handling, training pass holders shall not knowingly engage in the pursuit of spotted kittens or cougars with spotted kittens. Upon any observation of tracks of more than one cougar or visually observing the presence of spotted kittens during a training exercise, the handler shall terminate the current training pass activity and report the observations to the training area sergeant. The sergeant may choose to subsequently limit future training activities in the area." The adopted amendment addresses public comments that a

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

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 29, 2021.

Larry M. Carpenter, Chair
Fish and Wildlife Commission

OTS-2670.2

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) of this

section 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.

(5) A nonlethal pursuit training pass program participant who purchases a cougar harvest tag in Washington state cannot fill a cougar tag seventy-two hours before or after a training exercise.

(6) An individual who holds a current nonlethal pursuit training pass and is found to have any of the invalidating circumstances addressed in subsections (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 subsections (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.

(7) 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.

(8) 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.

(9) 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.

(10) 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.

(11) 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 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 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.

(12) Any training pass holder engaged in training activities is required to carry either pepper spray or an air horn so that nonlethal means are available to mitigate wildlife interactions.

(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.

(14) 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.

(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.

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