
HOUSE BILL 1108

State of Washington

62nd Legislature

2011 Regular Session

By Representatives Taylor, Shea, and McCune

Read first time 01/12/11. Referred to Committee on Agriculture & Natural Resources.

1 AN ACT Relating to the state's management of wolves; amending RCW
2 77.36.030, 77.12.020, 77.15.120, 77.15.130, 77.15.170, and 77.32.010;
3 and adding a new chapter to Title 77 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature finds that:

6 (1) The United States has not dealt with Washington and other
7 western states in good faith concerning the reintroduction of wolves in
8 the western United States;

9 (2) Multiple promises by federal officials regarding deadlines for
10 wolf delisting and the shift of full wolf management and control to
11 western states have passed with no effective delisting or shifting of
12 full management authority to the state level;

13 (3) Wolves have had and are having an unacceptable negative impact
14 on game herds, hunting opportunities, livestock production, the health
15 and safety of people engaged in outdoor work and recreation in
16 Washington and other western states, and the Washington economy;

17 (4)(a) The United States lacks authority to impose wolves on
18 Washington and to enforce protected status for wolves in Washington;

1 (b) There is no commerce in wolves among the states, that wild
2 wolves are not bought or sold across state lines, that wild wolves are
3 not transported across state lines as commercial items, and that there
4 is no genuine commercial connection for wild wolves in interstate
5 commerce sufficient to justify authority for congress to authorize
6 imposition of wolves on Washington; and

7 (c) Article VI, clause 2, of the United States Constitution, known
8 as the supremacy clause, and Article I, section 8, clause 3, of the
9 United States Constitution, known as the commerce clause, have been
10 amended by the states by the 9th and 10th amendments to the United
11 States Constitution. It is a principle of jurisprudence that if
12 conflict exists between provisions of a coequal body of law, the most
13 recently enacted provision prevails as the most recent expression of
14 the enacting authority; and

15 (5) The United States is responsible for injuries caused by
16 federally released wolves in Washington, including but not limited to
17 the loss of game animals, livestock, or pets, other injuries to
18 animals, injuries to persons working or recreating in the state, and
19 economic injuries to the people of the state.

20 NEW SECTION. **Sec. 2.** The purpose of this act is to:

21 (1) Prevent the decline of wild game animal populations in
22 Washington because of wolf predation and preserve the heritage of
23 harvesting those game animals for Washingtonians;

24 (2) Protect the stockgrowers of Washington from economic loss
25 because of wolf predation;

26 (3) Provide for the health and safety of people working outdoors or
27 engaged in outdoor recreation; and

28 (4) Assert the rights of Washington pursuant to the 9th and 10th
29 amendments to the United States Constitution.

30 NEW SECTION. **Sec. 3.** (1) The state of Washington asserts the
31 following authorities:

32 (a) Rights retained by the people in the 9th amendment to the
33 United States Constitution; and

34 (b) Powers reserved to the states in the 10th amendment to the
35 United States Constitution.

1 (2) Washington challenges the authority of the United States and of
2 congress under the United States Constitution, including Article I,
3 section 8, clause 3, known as the commerce clause, to:

4 (a) Impose wolves on the people and lands of Washington;

5 (b) Protect wolves;

6 (c) Prevent, prohibit, or suppress any state management of wolves;
7 and

8 (d) Manage wildlife in general within the borders of Washington,
9 including on private and state lands and public lands managed by the
10 United States.

11 NEW SECTION. **Sec. 4.** Any gray wolf conservation or management
12 plan implemented by the state or in existence on the effective date of
13 this section is void. Any future management plans must be developed
14 consistent with this chapter.

15 NEW SECTION. **Sec. 5.** (1) Any cooperative agreement existing on
16 the effective date of this section between the state or any agency of
17 the state and the United States or any agency of the United States for
18 the conservation and management of the gray wolf in Washington is void.

19 (2) On passage and approval of this act, the secretary of state
20 shall send copies of this act indicating the effective date to the
21 secretary of the United States department of the interior, the director
22 of the United States fish and wildlife service, the secretary of the
23 United States department of agriculture, and the director of the
24 department of fish and wildlife.

25 NEW SECTION. **Sec. 6.** (1) Any future cooperative agreement between
26 the state or any agency of the state and the United States or any
27 agency of the United States for the conservation and management of the
28 gray wolf in Washington is prohibited unless the conditions of the
29 Washington wolf management policy expressed in this chapter are met.

30 (2) Before any future cooperative agreement may be entered into,
31 the following officials shall certify in joint or separate written
32 statements that the conditions of the Washington wolf management policy
33 expressed in this chapter have been met:

34 (a) The speaker of the Washington state house of representatives;

35 (b) The president of the Washington state senate;

1 (c) The chair of the committee in the Washington state house of
2 representatives with jurisdiction over wildlife management issues;

3 (d) The chair of the committee in the Washington state senate with
4 jurisdiction over wildlife management issues;

5 (e) The state veterinarian;

6 (f) The director of the department of fish and wildlife; and

7 (g) The director of the department of agriculture.

8 (3) The signed, written statements required in subsection (2) of
9 this section must be sent to the secretary of state who shall confirm
10 that all of the officials listed in subsection (2) of this section are
11 in agreement that compliance with this chapter has been achieved.

12 (4) Compliance is certified and an agreement may be entered into
13 only if all officials listed in subsection (2) of this section submit
14 their written notice to the secretary of state within the same thirty-
15 day period.

16 (5) Officials listed in subsection (2) of this section may withdraw
17 their certification of compliance by sending written notice to the
18 secretary of state at any time during the thirty-day period established
19 in subsection (4) of this section. A cooperative agreement may not be
20 entered into if any official withdraws certification during that
21 period.

22 (6) Upon receipt of certification from all officials listed in
23 subsection (2) of this section and after the thirty-day period in
24 subsection (4) of this section has expired, the secretary of state
25 shall within seven days:

26 (a) Confirm that certification of compliance with this chapter is
27 complete; and

28 (b) Publicly post and send written notice to the governor,
29 including copies of the written certification.

30 (7)(a) Certification of compliance with this chapter must be
31 withdrawn if, at any time, two officials listed in subsection (2) of
32 this section send written notice of their withdrawal of certification
33 to the secretary of state. If this occurs, any cooperative agreement
34 in effect upon receipt is void and the presence of wolves in Washington
35 is considered to be noncompliant with the Washington wolf policy
36 expressed in this chapter.

37 (b) The secretary of state shall send written notice of

1 noncompliance to the governor and the officials listed in subsection
2 (2) of this section.

3 NEW SECTION. **Sec. 7.** The following conditions must be met before
4 the state or an agency of the state may enter into a gray wolf
5 cooperative conservation and management agreement with the United
6 States, an agency of the United States, or any other entity or adopt a
7 gray wolf management plan:

8 (1) The United States agrees in writing to accept all of the
9 following principles:

10 (a) Achieving a natural balance between nonhuman predators and prey
11 is not an acceptable goal or necessarily a desirable outcome;

12 (b) Introduction or enhancement of predator populations may not be
13 allowed to conflict with the heritage of and opportunity for hunting,
14 the safety of people engaged in outdoor recreation or work, and the
15 successful livelihood of people operating businesses on land where
16 predators range;

17 (c) All persons have a natural and undeniable right to defend
18 themselves and their property from immediate or apparent injury. This
19 right of self-defense of person and property applies to defense from
20 animals;

21 (d) Active predator control to protect game herds is engaging in
22 active wildlife management according to the needs and values of the
23 citizens of the state. These wildlife management activities may not be
24 impeded by federal agencies, federal regulations, or federal personnel;

25 (e) The state is eligible to recoup damages from the United States
26 for each game animal taken by wolves; and

27 (f) The United States court of federal claims is the proper venue
28 for damage claims arising under (e) of this subsection;

29 (2) The United States agrees in writing to unfettered state
30 management of wolves with no further assertion of federal authority;

31 (3) The United States accepts in writing that "breeding pair" is a
32 term or concept that may not be applied to quantification of gray wolf
33 recovery or maintenance; and

34 (4) The United States agrees in writing that a total of one hundred
35 fifty wolves present in Washington is sufficient to maintain a viable
36 wolf population.

1 NEW SECTION. **Sec. 8.** Until all of the provisions of the
2 Washington wolf policy expressed in this chapter are met, wolves are
3 unprotected in Washington wherever they are found on state or private
4 land.

5 NEW SECTION. **Sec. 9.** To be in compliance with the Washington wolf
6 management policy expressed in this chapter, the wolf presence in
7 Washington must meet the following criteria:

8 (1) The gray wolf must be removed from the United States' list of
9 endangered or threatened wildlife and the state list of endangered
10 species;

11 (2) The statewide average for resident big game hunter success
12 rates has not declined in the three most recent calendar years below
13 the average of the ten most recent calendar years;

14 (3) Wolf populations are at or below one hundred fifty percent of
15 the target population of one hundred fifty wolves;

16 (4) Livestock predation by wolves, as determined by the county
17 commissioners of any county in which wolf predation is alleged to have
18 occurred, has not increased in the average of the three most recent
19 complete calendar years above the average for the most recent ten
20 calendar years; and

21 (5) Wolves present in the state are not afflicted with, carrying,
22 or transmitting infectious diseases or parasites transmissible to
23 humans or domestic or wild animals as determined by the state
24 veterinarian.

25 NEW SECTION. **Sec. 10.** Issuing a citation or arresting a person
26 for taking a wolf on state or private property or possessing a wolf
27 carcass or any parts of a wolf taken on state or private property is
28 prohibited.

29 NEW SECTION. **Sec. 11.** The office of financial management shall
30 reimburse reasonable costs and attorneys' fees to any Washington
31 resident accused by the United States of illegally taking a wolf on
32 state or private property if the taking occurs at a time when wolf
33 presence in Washington is not in compliance with the Washington wolf
34 management policy expressed in this chapter.

1 NEW SECTION. **Sec. 12.** (1) At any time that the wolf presence in
2 Washington is not in compliance with the provisions of the Washington
3 wolf management policy expressed in this chapter, the department of
4 fish and wildlife may not expend any state resources, including money
5 and time, implementing or enforcing any wolf policies of the United
6 States.

7 (2) The department of fish and wildlife may expend state resources:

8 (a) For the enforcement of this chapter; and

9 (b) Specifically appropriated for the purpose of documenting and
10 quantifying compliance with sections 7 and 9 of this act.

11 (3) The department of fish and wildlife may expend any federal
12 moneys specifically earmarked and appropriated for wolf control in
13 Washington. Any expenditure of this money must be publicly posted on
14 a quarterly basis.

15 NEW SECTION. **Sec. 13.** Before any numbers used to determine
16 compliance with the Washington wolf management policy expressed in this
17 chapter may be accepted, including but not limited to numbers of
18 wolves, wolf packs, and game animals in Washington or regions of
19 Washington, hunter success numbers, and numbers of livestock animals
20 killed or injured by wolves, the joint legislative audit and review
21 committee shall issue a report determining whether the methodologies
22 and procedures used by state agencies are reasonable.

23 NEW SECTION. **Sec. 14.** (1) The attorney general shall file and
24 pursue claims against the United States for damages resulting from wolf
25 predation, including:

26 (a) Economic losses;

27 (b) Loss of big game animals, in accordance with section 7(1)(e) of
28 this act;

29 (c) Loss of livestock and pets; and

30 (d) Personal injury inflicted by a wolf on any person in
31 Washington.

32 (2) Claims must be filed in the United States court of federal
33 claims.

34 (3) Claims for reimbursement must include financial compensation
35 for all damages incurred since January 11, 2001.

1 (4) If the attorney general fails to file and pursue a claim within
2 ninety days of the effective date of this section, any resident or
3 organization of Washington may file a claim on behalf of the citizens
4 of Washington. In that event, the reasonable costs and attorneys' fees
5 incurred become an absolute claim against the office of financial
6 management and may be billed to and must be paid by the state on a
7 quarterly basis. If costs and attorneys' fees are recovered through
8 litigation, the state must be reimbursed for amounts paid, up to the
9 amounts recovered.

10 NEW SECTION. **Sec. 15.** Persons responsible for inflicting wolves
11 on Washington or preventing state management of wolves are civilly
12 liable for any damages related to the serious physical injury or death
13 of a human as the result of an attack by a wolf during any period of
14 noncompliance with the provisions of this chapter. This includes any
15 individual or group that is:

16 (1) Party to a lawsuit with the purpose of preventing or delaying
17 the implementation of state management of wolves during the pendency of
18 the lawsuit; or

19 (2) Found to have knowingly provided false or flawed data or is
20 found to have been grossly negligent in providing data regarding wolf
21 numbers, wolf distribution, wolf impacts on wildlife or livestock,
22 projected wolf impacts, or similar data.

23 NEW SECTION. **Sec. 16.** (1) If any person in Washington is killed
24 or suffers serious physical injury as the result of an attack by a wolf
25 during any period of noncompliance with the provisions of this chapter,
26 as determined by the county commissioners of the county where the
27 alleged attack occurred, the wolf or wolves involved in the attack are
28 considered likely to be infected with rabies and to infect other
29 animals and humans.

30 (2)(a) Subject to subsection (1) of this section, any person may
31 kill any wolf by any means within one hundred miles of the alleged
32 attack.

33 (b) The killing of any wolf pursuant to this subsection must be
34 reported to the state veterinarian within twelve hours. That wolf must
35 be tested for rabies and other diseases. A complete necropsy report
36 must be publicly posted as soon as it becomes available.

1 (c) The provisions of this subsection remain in effect until the
2 county commissioners determine that all surviving wolves involved in
3 the attack are free of rabies.

4 NEW SECTION. **Sec. 17.** (1) When the United States fish and
5 wildlife service removes the Northern Rocky Mountain or gray wolf from
6 the United States' list of endangered or threatened wildlife and the
7 Washington state department of fish and wildlife removes the wolf from
8 the state list of endangered species pursuant to section 9(1) of this
9 act and when all other conditions of the Washington wolf management
10 policy expressed in this chapter are met, the department of fish and
11 wildlife shall manage the wolf as a species in need of management. The
12 fish and wildlife commission shall declare the wolf a big game animal,
13 a furbearer, or both, and may regulate the taking of a wolf as a big
14 game animal or furbearer.

15 (2) The Washington state department of fish and wildlife, or the
16 Washington state department of agriculture may control wolves for the
17 protection and safeguarding of livestock if the control action is
18 consistent with a wolf management plan approved by both the department
19 of fish and wildlife and the department of agriculture.

20 NEW SECTION. **Sec. 18.** This act may be known and cited as the
21 Washington wolf recovery act.

22 **Sec. 19.** RCW 77.36.030 and 2009 c 333 s 61 are each amended to
23 read as follows:

24 (1) Subject to limitations and conditions established by the
25 commission, the owner, the owner's immediate family member, the owner's
26 documented employee, or a tenant of real property may trap, consistent
27 with RCW 77.15.194, or kill wildlife that is threatening human safety
28 or causing property damage on that property, without the licenses
29 required under RCW 77.32.010 or authorization from the director under
30 RCW 77.12.240.

31 (2) The commission shall establish the limitations and conditions
32 of this section by rule. The rules must include:

33 (a) Appropriate protection for threatened or endangered species;

34 (b) Instances when verbal or written permission is required to kill
35 wildlife;

1 (c) Species that may be killed under this section; and

2 (d) Requirements for the disposal of wildlife trapped or killed
3 under this section.

4 (3) In establishing the limitations and conditions of this section,
5 the commission shall take into consideration the recommendations of
6 ~~((the))~~ a Washington ~~((state))~~ wolf ~~((conservation and))~~ management
7 plan developed under chapter 77.--- RCW (the new chapter created in
8 section 25 of this act) and in no instance may the commission limit in
9 any way the right of an individual to kill a wolf that is in the
10 process of attacking livestock, pets, or other personal property.

11 **Sec. 20.** RCW 77.12.020 and 2002 c 281 s 3 are each amended to read
12 as follows:

13 (1) The director shall investigate the habits and distribution of
14 the various species of wildlife native to or adaptable to the habitats
15 of the state. Consistent with chapter 77.--- RCW (the new chapter
16 created in section 25 of this act), the commission shall determine
17 whether a species should be managed by the department and, if so,
18 classify it under this section.

19 (2)(a) Except for the gray wolf, the commission may classify by
20 rule wild animals as game animals and game animals as fur-bearing
21 animals.

22 (b) Consistent with section 17 of this act, the commission must
23 classify gray wolves as fur-bearing game animals.

24 (3) The commission may classify by rule wild birds as game birds or
25 predatory birds. All wild birds not otherwise classified are protected
26 wildlife.

27 (4) In addition to those species listed in RCW 77.08.020, the
28 commission may classify by rule as game fish other species of the class
29 Osteichthyes that are commonly found in fresh water except those
30 classified as food fish by the director.

31 (5) The director may recommend to the commission that a species of
32 wildlife should not be hunted or fished. Consistent with chapter
33 77.--- RCW (the new chapter created in section 25 of this act), the
34 commission may designate species of wildlife as protected.

35 (6) If the director determines that a species of wildlife is
36 seriously threatened with extinction in the state of Washington, the

1 director may request its designation as an endangered species.
2 Consistent with chapter 77.--- RCW (the new chapter created in section
3 25 of this act), the commission may designate an endangered species.

4 (7) If the director determines that a species of the animal
5 kingdom, not native to Washington, is dangerous to the environment or
6 wildlife of the state, the director may request its designation as
7 deleterious exotic wildlife. The commission may designate deleterious
8 exotic wildlife.

9 (8) Upon recommendation by the director, the commission may
10 classify nonnative aquatic animal species according to the following
11 categories:

12 (a) Prohibited aquatic animal species: These species are
13 considered by the commission to have a high risk of becoming an
14 invasive species and may not be possessed, imported, purchased, sold,
15 propagated, transported, or released into state waters except as
16 provided in RCW 77.15.253;

17 (b) Regulated aquatic animal species: These species are considered
18 by the commission to have some beneficial use along with a moderate,
19 but manageable risk of becoming an invasive species, and may not be
20 released into state waters, except as provided in RCW 77.15.253. The
21 commission shall classify the following commercial aquaculture species
22 as regulated aquatic animal species, and allow their release into state
23 waters pursuant to rule of the commission: Pacific oyster (*Crassostrea*
24 *gigas*), kumamoto oyster (*Crassostrea sikamea*), European flat oyster
25 (*Ostrea edulis*), eastern oyster (*Crassostrea virginica*), manila clam
26 (*Tapes philippinarum*), blue mussel (*Mytilus galloprovincialis*), and
27 suminoe oyster (*Crassostrea ariankensis*);

28 (c) Unregulated aquatic animal species: These species are
29 considered by the commission as having some beneficial use along with
30 a low risk of becoming an invasive species, and are not subject to
31 regulation under this title;

32 (d) Unlisted aquatic animal species: These species are not
33 designated as a prohibited aquatic animal species, regulated aquatic
34 animal species, or unregulated aquatic animal species by the
35 commission, and may not be released into state waters. Upon request,
36 the commission may determine the appropriate category for an unlisted
37 aquatic animal species and classify the species accordingly;

1 (e) This subsection (8) does not apply to the transportation or
2 release of nonnative aquatic animal species by ballast water or ballast
3 water discharge.

4 (9) Upon recommendation by the director, the commission may develop
5 a work plan to eradicate native aquatic species that threaten human
6 health. Priority shall be given to water bodies that the department of
7 health has classified as representing a threat to human health based on
8 the presence of a native aquatic species.

9 **Sec. 21.** RCW 77.15.120 and 2000 c 107 s 236 are each amended to
10 read as follows:

11 (1) Except as limited by section 10 of this act, a person is guilty
12 of unlawful taking of endangered fish or wildlife in the second degree
13 if the person hunts, fishes, possesses, maliciously harasses or kills
14 fish or wildlife, or maliciously destroys the nests or eggs of fish or
15 wildlife and the fish or wildlife is designated by the commission as
16 endangered, and the taking has not been authorized by rule of the
17 commission.

18 (2) A person is guilty of unlawful taking of endangered fish or
19 wildlife in the first degree if the person has been:

20 (a) Convicted under subsection (1) of this section or convicted of
21 any crime under this title involving the killing, possessing,
22 harassing, or harming of endangered fish or wildlife; and

23 (b) Within five years of the date of the prior conviction the
24 person commits the act described by subsection (1) of this section.

25 (3)(a) Unlawful taking of endangered fish or wildlife in the second
26 degree is a gross misdemeanor.

27 (b) Unlawful taking of endangered fish or wildlife in the first
28 degree is a class C felony. The department shall revoke any licenses
29 or tags used in connection with the crime and order the person's
30 privileges to hunt, fish, trap, or obtain licenses under this title to
31 be suspended for two years.

32 **Sec. 22.** RCW 77.15.130 and 1998 c 190 s 14 are each amended to
33 read as follows:

34 (1) Except as limited by section 10 of this act, a person is guilty
35 of unlawful taking of protected fish or wildlife if:

1 (a) The person hunts, fishes, possesses, or maliciously kills
2 protected fish or wildlife, or the person possesses or maliciously
3 destroys the eggs or nests of protected fish or wildlife, and the
4 taking has not been authorized by rule of the commission; or

5 (b) The person violates any rule of the commission regarding the
6 taking, harming, harassment, possession, or transport of protected fish
7 or wildlife.

8 (2) Unlawful taking of protected fish or wildlife is a misdemeanor.

9 **Sec. 23.** RCW 77.15.170 and 1999 c 258 s 5 are each amended to read
10 as follows:

11 (1) A person is guilty of waste of fish and wildlife in the second
12 degree if:

13 (a) The person kills, takes, or possesses fish, shellfish, or
14 wildlife and the value of the fish, shellfish, or wildlife is greater
15 than twenty dollars but less than two hundred fifty dollars; and

16 (b) The person recklessly allows such fish, shellfish, or wildlife
17 to be wasted.

18 (2) A person is guilty of waste of fish and wildlife in the first
19 degree if:

20 (a) The person kills, takes, or possesses fish, shellfish, or
21 wildlife having a value of two hundred fifty dollars or more or
22 wildlife classified as big game; and

23 (b) The person recklessly allows such fish, shellfish, or wildlife
24 to be wasted.

25 (3)(a) Waste of fish and wildlife in the second degree is a
26 misdemeanor.

27 (b) Waste of fish and wildlife in the first degree is a gross
28 misdemeanor. Upon conviction, the department shall revoke any license
29 or tag used in the crime and shall order suspension of the person's
30 privileges to engage in the activity in which the person committed
31 waste of fish and wildlife in the first degree for a period of one
32 year.

33 (4) It is prima facie evidence of waste if a processor purchases or
34 engages a quantity of food fish, shellfish, or game fish that cannot be
35 processed within sixty hours after the food fish, game fish, or
36 shellfish are taken from the water, unless the food fish, game fish, or
37 shellfish are preserved in good marketable condition.

1 (5) Nothing in this section applies to the killing, possession, or
2 other taking of wolves except as otherwise provided in chapter 77.---
3 RCW (the new chapter created in section 25 of this act).

4 **Sec. 24.** RCW 77.32.010 and 2009 c 564 s 956 are each amended to
5 read as follows:

6 (1) Except as otherwise provided in this chapter or chapter 77.---
7 RCW (the new chapter created in section 25 of this act), a recreational
8 license issued by the director is required to hunt for or take wild
9 animals or wild birds, fish for, take, or harvest fish, shellfish, and
10 seaweed. A recreational fishing or shellfish license is not required
11 for carp, smelt, and crawfish, and a hunting license is not required
12 for bullfrogs.

13 (2) A permit issued by the department is required to park a motor
14 vehicle upon improved department access facilities.

15 (3) During the 2009-2011 fiscal biennium to enable the
16 implementation of the pilot project established in section 307, chapter
17 329, Laws of 2008, a fishing permit issued to a nontribal member by the
18 Colville Tribes shall satisfy the license requirements in subsection
19 (1) of this section on the waters of Lake Rufus Woods and on the north
20 shore of Lake Rufus Woods, and a Colville Tribes tribal member
21 identification card shall satisfy the license requirements in
22 subsection (1) of this section on all waters of Lake Rufus Woods.

23 NEW SECTION. **Sec. 25.** Sections 1 through 18 of this act
24 constitute a new chapter in Title 77 RCW.

--- END ---