

Grazing Program Guidance and Tools

220-500-200

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CR-1027



Fish and Wildlife Commission Presentation Summary Sheet

Meeting date:

1/29/2021

Agenda item:

Grazing Program Guidance and Tools

Presenter(s):

Cynthia Wilkerson, Paul Dahmer and Jeff Burnham, Lands Division, Wildlife Program

Background summary:

Department staff will brief the Commission on WDFW's grazing program, and proposed changes to WAC 220-500-200 and Policy C-6003 regarding livestock grazing on department lands.

Staff recommendation:

Briefing only

Policy issue(s) and expected outcome:

Proposed changes to both the grazing policy and WAC focus on clarifying inconsistencies and ambiguities between the two, clarifying the roles of grazing on department lands, and continuing to emphasize that ecological integrity must be maintained. Staff will present recommendations for Commission decision to occur on February 12th. Themes from public comments will be summarized, including changes that have been made in response.

Additionally, 2 new implementation processes will be presented for Commission awareness:

1 – Wolf-livestock conflict guidance: Minimizing wolf-livestock conflict is an overriding priority of Washington department of fish and wildlife (WDFW) grazing permits. WDFW seeks to maintain maximum flexibility to meet wolf recovery goals and to continue to permit viable grazing in areas potentially used by wolves. WDFW prioritizes wolf conservation on its lands due to its mission and the funding sources used to purchase lands. This may impact where grazing occurs on WDFW lands and/or the number of proactive nonlethal deterrent measures required by permit.

2 – Grazing Evaluation Framework: WDFW may receive grazing proposals for WDFW-managed lands from a variety of sources. The framework to evaluate potential new grazing provides staff a consistent method to identify objectives, risks, costs, and income associated with a grazing proposal providing critical information for a decision by management as to whether a grazing plan should be developed for further review by the department and Fish and Wildlife Commission.

Fiscal impacts of agency implementation:

None

Public involvement process used and what you learned:

Outreach in early 2019 to conservation groups and producers regarding wolf-livestock management measures. Additional workshop on issue in late 2019. Outreach to producers, conservation groups and tribes in May 2020 discussing entire grazing program and upcoming SEPA review. Public comment on proposed rule changes and SEPA review of entire grazing program in September 2020. Additional public comment at F&W Commission briefing in October 2020. Comments ranged from both support of the package to concerns regarding grazing impacts on department lands and belief that grazing is inconsistent with WDFW's mission.

Action requested and/or proposed next steps:

Rule and policy adoption are expected at the February 12, 2021 Commission meeting.

Draft motion language:

Click or tap here to enter text.

Post decision communications plan:

Click or tap here to enter text.

Form revised 8-4-20

WAC 220-500-200 Livestock grazing on department of fish and wildlife lands. All persons wishing to apply for a grazing permit for acreage managed by the Washington department of fish and wildlife should contact the ~~((Washington Department of Fish and Wildlife, 600 North Capitol Way))~~ department at P.O. Box 43200, Olympia, Washington ((98501-1091)) 98504-3200.

(1) The director is authorized to ~~((enter into))~~ issue grazing permits when the director determines that ~~((a))~~ the grazing permits will be consistent with the ~~((desired ecological condition for those lands or the))~~ department's mission, management objectives, and strategic plan. ~~((Except for temporary permits, or permits that are being renewed or renegotiated with existing permittees, grazing permits shall first be submitted to the commission, which may review the permit to ensure it conforms with commission policy. If, within thirty days, the commission has not disapproved the permit, the director shall be deemed authorized to enter into that permit.~~

~~(2) The director shall negotiate grazing permits with potential grazing operators to ensure the highest benefits to fish and wildlife. The director may advertise and sell a permit to use department lands for grazing at public auction to the highest bidder. The director is authorized to reject any and all bids if it is determined to be in the best interest of the fish and wildlife to do so.~~

~~(3) The term of each grazing permit shall be no greater than five years. When an existing permit expires or is about to expire, the director may renew the permit for up to another five years, renegotiate the grazing permit with the existing permittee, negotiate a new permit with a new grazing operator, or sell the permit at public auction to the highest bidder. The director is authorized to reject any and all bids if it is determined to be in the best interest of the fish and wildlife to do so. The director may grant a term longer than five years only with the prior approval of the commission.~~

~~(4) A temporary permit may be granted by the director to satisfy short-term needs where benefits to wildlife management programs and the public interest can be demonstrated. The term of a temporary permit shall not exceed one year and no fee need be charged.~~

~~(5) Except for temporary permits lasting less than two weeks, each grazing permit proposal shall be accompanied by a domestic livestock grazing management plan that includes a description of ecological impacts, desired ecological condition, fish and wildlife benefits, a monitoring plan, and an evaluation schedule for lands that will be grazed by livestock. The department shall inspect the site of a grazing permit no less than two times each year. The director shall retain the right to alter any provision of the plan as required to benefit fish or wildlife management, public hunting and fishing, or other recreational uses.~~

~~(6) The director may cancel a permit (a) for noncompliance with the terms and conditions of the permit, or (b) if the area described in the permit is included in a land use plan determined by the agency to be a higher and better use, or (c) if the property is sold or conveyed, or (d) if damage to wildlife or wildlife habitat occurs.~~

~~(7))~~ (2) A temporary permit may be granted by the director to satisfy short-term needs where benefits to wildlife management programs and the public interest can be demonstrated. The term of a tem-

porary permit shall not exceed one year and no fee need necessarily be charged.

(3) With the following three exceptions, the commission must approve grazing permits prior to issuance to ensure that they conform to commission policy:

(a) Temporary permits;

(b) Permits that are being renewed or renegotiated for acreage where the department has permitted nontemporary grazing during the previous ten years; and

(c) Permits that are being issued for acreage acquired by the department within the previous twelve months.

(4) A permit issued without commission review on acreage acquired by the department within the previous twelve months must not exceed an initial duration of three years, and may not be subsequently reissued before being submitted to the commission for review and approval.

(5) The director shall negotiate grazing permits with potential grazing operators to ensure the highest benefits to fish and wildlife. When an existing permit expires or is about to expire, the director may renew the permit for up to another five years, renegotiate the grazing permit with the existing permittee or with a new grazing operator, decline to reissue the permit and provide notice of and rationale for nonrenewal by the end of the calendar year of the most recent permitted grazing season, or advertise and sell the permit at public auction to the highest bidder. The director is authorized to reject any and all bids if it is determined to be in the best interest of the fish and wildlife to do so. No grazing permit shall have a term exceeding five years unless the commission grants prior approval for a longer term.

(6) Except for temporary permits where grazing on department managed lands is allowed for the equivalent of fewer than fourteen total days, each grazing permit proposal shall be accompanied by a domestic livestock grazing management plan that includes a description of ecological impacts, desired ecological conditions, fish and wildlife benefits, a monitoring plan, and an evaluation schedule for lands that will be grazed by livestock. Grazing management lands will address ecosystem standards referenced in RCW 77.12.204. The department shall inspect the site of a grazing permit no less than two times each year. The director shall retain the right to alter any provision of the plan as required to benefit fish or wildlife management, public hunting and fishing, or other recreational uses.

(7) The director may cancel a permit:

(a) For noncompliance with the terms and conditions of the permit;

(b) If the area described in the permit is included in a land use plan determined by the agency to be a higher and better use;

(c) If the property is sold or conveyed; or

(d) If damage to wildlife or wildlife habitat occurs.

Notice of and rationale for cancellation will be provided to the permittee as far in advance as possible.

(8) All lands covered by any grazing permit agreement shall at all times be open to public hunting, fishing and other wildlife recreational uses, consistent with applicable seasons and rules, unless such lands have been closed by action of the commission or emergency order ((e#)) by the director.

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

WAC 220-500-200 Livestock grazing on department of fish and wildlife lands.

Written Supporting Comments:

Approximately 37% of commenters who indicated some kind of preference agreed with the proposal. Examination of their written responses, however, showed that many of these commenters only agreed with portions of the proposal, or thought that it was a positive step but did not go far enough in a specified direction. Many commenters, including those who “agreed” and “disagreed” with the proposal, expressed similar values (for example, the need to prioritize wildlife) but perhaps differed about whether the proposal would protect those values. Many commenters addressed multiple points, some which were out of scope of the proposal.

Some responders agreed that grazing needs to be appropriately managed in terms of multiple factors, including some combination of intensity, timing and rotation, and monitoring and oversight. Some agreed (in support of the proposal) that wildlife and wolves should be prioritized. Several commenters agreed (apparently in support of the proposal) that grazing is good for habitat, forests, and fuels management/prevention of severe fires. Several commenters agreed the Fish and Wildlife Commission, or at least a majority of Commissioners, should approve grazing permits.

Written Opposing, Neutral, and Other Comments:

About 21% of commenters indicated a neutral response, but again, several of these criticized certain portions of the proposal. About 42% of commenters indicated disagreement with the proposal. In addition to the people who responded directly to the WAC invitation, several individuals who submitted responses pursuant to the SEPA comment period included WAC commentary in their SEPA responses. Some of these individuals only disagreed with certain parts of the proposal, while others suggested that WDFW should not permit grazing at all. As with supporting commentary, many responses addressed multiple points, some of which were out of scope of the proposal—such as the commonly expressed sentiment that wildlife in general and wolves in particular should not be killed, or that more wolves are needed, or that grazing should not occur in wolf habitat, or that ranchers not implementing nonlethal deterrence measures should be fined—or were relevant to SEPA but not obviously relevant to the WAC (including effects on recreation opportunity and community character, the role of best available science, cross-program review, and the definition and use of ecological integrity). Overall, a majority of commenters expressed caution, skepticism, or outright opposition to the idea of permitted grazing on WDFW lands or the idea that grazing is consistent with WDFW’s mission, although WDFW had not proposed changing the existing rule to prohibit livestock grazing.

Other specific objections: many responders commented that grazing has (sometimes major) negative effects on various resources (riparian, habitat, wildlife, vegetation, soils, etc.), which they sometimes used to argue that grazing is inconsistent with WDFW’s

mission. Some commenters thought that the term “desired ecological conditions” should not be removed from the opening section of the rule. Some people wrote that the Fish and Wildlife Commission should not review grazing permits. Other commenters recommended a prohibition of domestic sheep grazing, or a prohibition of any expansion of grazing. One person suggested that grazing only be permitted in areas of previous pasture or hay cultivation. A few people recommended clarifying language in the WAC about temporary permits, or simply disallowing temporary permits altogether. One person wanted the exception for a required grazing management plan changed from permits allowing no more than 14 cumulative days of grazing to those allowing no more than 14 consecutive days of grazing. Several people felt that climate change should be addressed. Several individuals wrote about suggested economic considerations, such as an economic analysis of permits, or that grazing permits should be profitable for WDFW, or that WDFW should charge market rate rather than the federal rate for animal unit months, or alternatively that cattle owners should be supported. And some individuals negatively characterized the proposal because of a perceived focus on wildlife rather than livestock. One comment indicated that the current rule should not be changed, and another argued that it should be simplified

Some relatively neutral comments were received as well. For instance, one suggested that the proposed rule changes are inconsequential. Another claimed that the proposed rule cannot be reasonably evaluated until the Strategic Plan is [was] finalized. One commenter strongly believed that WDFW staff are doing a poor job, but this commenter’s opinion on the proposed rule change was unclear.

Fish and Wildlife Commission Hearing, Public Comments:

(To be filled out after the first Commission meeting)

Text.

Rationale-Agency Action Regarding Comments:

[RCW 34.05.325 (6)(iii) Summarizing all comments received regarding the proposed rule, and responding to the comments by category or subject matter, indicating how the final rule reflects agency consideration of the comments, or why it fails to do so.]

Text.



PROPOSED RULE MAKING

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

Do NOT use for expedited rule making

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: August 31, 2020

TIME: 10:30 AM

WSR 20-18-060

Agency: Washington Department of Fish and Wildlife (WDFW)

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 20-08-099 filed on March 30, 2020 ; or

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

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

Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject)

WAC 220-500-200 Livestock grazing on department lands.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
October 23-24, 2020	8:00 a.m.	Webinar and/or conference call.	This meeting will take place by webinar. The public may participate in the meeting. Visit our website at http://wdfw.wa.gov/about/commission/meetings or contact the Commission office at (360) 902-2267 or commission@dfw.wa.gov for instructions on how to join the meeting.

Date of intended adoption: November 20, 2020 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: Wildlife Program

Address: PO Box 43200, Olympia, WA. 98504

Email: Rules.Coordinator@dfw.wa.gov

Fax:

Other: Rule Comment: <https://www.surveymonkey.com/r/DFWGRAZING20>

SEPA Comment: <https://wdfw.wa.gov/licenses/environmental/sepa/open-comments>

By (date) September 24, 2020

Assistance for persons with disabilities:

Contact Dolores Noyes

Phone: (360) 902-2346

Fax:

TTY: (360) 902-2207

Email: dolores.noyes@dfw.wa.gov

Other:

By (date) October 14, 2020

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

The purpose of the proposed rule is to clarify how the Washington Department of Fish and Wildlife (WDFW) manages and implements grazing on lands owned or managed by WDFW. Specifically, grazing must be consistent with WDFW's mission, management objectives, and strategic plan. This language would replace existing language that says that grazing must be consistent with desired ecological conditions.

The Commission currently does not review grazing permits being renewed. This amendment clarifies that permits up for renewal include permits where grazing has occurred within the last ten years, and that grazing permit renewals are not issued where only temporary permits have previously occurred. Existing rule states that temporary permits are those permits that have been issued for a period of not more than one year.

The proposed rule also requires that the Commission must approve, rather than just review, all non-temporary grazing activity on lands that have not been grazed within the past ten years.

The rule also adds that Commission review is not required for permits for land acquired within the previous 12 months, but specifies that such permits are limited to a duration of three years after which time a grazing permit must be approved by the Commission before it can be renewed.

The proposed rule clarifies that grazing plans are not required for permits where livestock grazing will last for fewer than 14 days, whereas the current language refers to permits lasting less than two weeks. Through this change, the 14 days need not necessarily be consecutive. The amendment also allows WDFW to discontinue a grazing permit upon expiration of a permit.

Reasons supporting proposal:
 The proposed rule clarifies and strengthens WDFW's grazing rule, and promotes consistency with WDFW's mission, objectives, and strategic plan. It adds the requirement for Commission approval of new grazing permits where grazing has not occurred within the previous ten years.

The Commission approval exception for land acquired in the previous 12 months allows WDFW to acquire land and maintain grazing activity ongoing prior to and during the acquisitions process while the department measures ecological integrity and plans future management.

Clarifications and other proposed amendments will result in more comprehensive statewide implementation of WDFW's grazing program consistent with WDFW's mission, management objectives and strategic plan.

Statutory authority for adoption: RCWs 77.04.012, 77.04.055, 77.12.047, and 77.12.240

Statute being implemented: RCWs 77.04.012, 77.04.055, 77.12.047, and 77.12.240

Is rule necessary because of a:

Federal Law?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

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

<input type="checkbox"/> Private
<input type="checkbox"/> Public
<input checked="" type="checkbox"/> Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Eric Gardner	1111 Washington St. SE Olympia, WA. 98501	(360) 902-2515
Implementation:	Eric Gardner	1111 Washington St. SE Olympia, WA. 98501	(360) 902-2515
Enforcement:	Steve Bear	1111 Washington St. SE Olympia, WA. 98501	(360) 902-2373

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

If yes, insert statement here:

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

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

Is a cost-benefit analysis required under RCW 34.05.328?

- Yes: A preliminary cost-benefit analysis may be obtained by contacting:
 - Name:
 - Address:
 - Phone:
 - Fax:
 - TTY:
 - Email:
 - Other:

No: Please explain: A cost-benefit analysis is not required for this rulemaking under RCW 34.05.328.

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

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

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

Citation and description:

- This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.
- This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.
- This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

- | | |
|---|--|
| <input type="checkbox"/> RCW 34.05.310 (4)(b)
(Internal government operations) | <input type="checkbox"/> RCW 34.05.310 (4)(e)
(Dictated by statute) |
| <input type="checkbox"/> RCW 34.05.310 (4)(c)
(Incorporation by reference) | <input type="checkbox"/> RCW 34.05.310 (4)(f)
(Set or adjust fees) |
| <input type="checkbox"/> RCW 34.05.310 (4)(d)
(Correct or clarify language) | <input type="checkbox"/> RCW 34.05.310 (4)(g)
((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(4).

Explanation of exemptions, if necessary: The proposed rule does not affect small businesses. The proposed rule describes how grazing activities are to occur on lands owned or managed by WDFW. The development and submission of a grazing plan is already in existing regulations and such plans are typically done by WDFW staff.

COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

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

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

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

Name:

Address:

Phone:

Fax:

TTY:

Email:

Other:

Date: August 31, 2020

Signature:

Name: Michele K Culver



Title: Agency Rules Coordinator