

Grazing Program Policy and WACs - Decision

220-500-200

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## Summary Sheet

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**Meeting dates:** February 12, 2021

**Agenda item:** Grazing Rule and Policy - Decision

**Presenter(s):** Cynthia Wilkerson, Paul Dahmer and Jeff Burnham, Lands Division, Wildlife Program

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**Background summary:**

Staff briefed the Commission on:

- 1) Proposed changes to WAC 220-500-200 Livestock grazing on department lands.
  - 2) Proposed changes to Policy C-6003 Domestic livestock grazing on department lands.
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**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.

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**Fiscal impacts of agency implementation:**

No fiscal impacts beyond the status quo.

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**Public involvement process used and what you learned:**

Initial outreach to producers, conservation groups and tribes in May. Both support, and concern regarding grazing impacts on department lands and belief that grazing is inconsistent with WDFW's mission. SEPA and public rule review have been completed. Public comment written and verbal, was taken at the October Commission Meeting.

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**Action requested and/or proposed next steps:**

I move to adopt the recommended amendments to WAC 220-500-200, including the recommended adjustments as presented today.

I also move to adopt the amended Policy C-6003 as presented today.

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**Post decision communication plan:**

WDFW Website

News Release

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

**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 conditions for those lands and 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 temporary permit shall not exceed one year and no fee need necessarily be charged.

(3) With the following three exceptions, grazing permits shall first be submitted to the commission, which may review the permits 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.

If, within thirty days, the commission has not disapproved a permit, the director shall be deemed authorized to issue that permit.

(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 ((~~of~~)) by the director.

[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 § 220-500-200, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.12.047, 77.12.020, 77.12.570, 77.12.210. WSR 07-11-017 (Order 07-62), § 232-12-181, filed 5/3/07, effective 6/3/07. Statutory Authority: RCW 77.12.047. WSR 03-03-016 (Order 03-03), § 232-12-181, filed 1/7/03, effective 2/7/03. Statutory Authority: RCW 77.12.210. WSR 88-23-109 (Order 323), § 232-12-181, filed 11/22/88. Statutory Authority: RCW 77.12.040. WSR 82-04-034 (Order 177), § 232-12-181,



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

### RECOMMENDED ADJUSTMENTS

The department recommends the following adjustments since the Code Reviser filed (CR-102). The adjustments are included in your notebooks. Below, CR-102 text appears in quotation marks and recommended changes are made in underline/strikethrough format.

#### Page 2

- Change: In section 1, add “... grazing permits will be consistent with the desired ecological conditions for those lands and with the department’s mission ...”

Rationale: This change would reinstate language that currently exists in WAC 220-500-200 that WDFW had earlier proposed to remove. WDFW’s original intent was to reduce redundancy and repetition within WAC 220-500-200 and Commission Policy C-6003, not to remove requirements that provide environmental protections. (The concept of “desired ecological conditions” would remain, as it is currently, a required element of grazing management plans, which are components of most WDFW grazing permits.) Based on public comment, WDFW therefore concludes that it is most appropriate to retain this existing requirement within the rule that would clearly apply to all permits, as opposed to only the vast majority of permits.

#### Page 4

- Change: In section 3, replace text as follows: “... With the following three exceptions, grazing permits shall first be submitted to the commission which may review the permits ~~the commission must approve grazing permits prior to issuance~~ to ensure that they conform to commission policy: ...”

Rationale: WDFW received a range of public comments on what the Commission should/should not review, and what the Commission should/should not approve. WDFW concluded that Commissioners are not necessarily natural resource professionals and should not be expected to actively “approve” the technical details of each grazing permit, and that the Commission should retain 1) its present responsibility of reviewing applicable permits, and 2) its ability to disapprove grazing permits (described in the next change below).

#### Page 5

- Change: In section 3, add “... previous twelve months. If, within thirty days, the commission has not disapproved a permit, the director shall be deemed authorized to issue that permit ...”

Rationale: This text, with very minor modification, is part of the same original passage as the previous recommended change establishing the Commission's ability to disapprove grazing permits. Because of updated sentence structure in CR-102 relative to existing WAC, it now appears after the exceptions to commission review.

## **Page 5**

- Change: In section 4, delete as follows: "... and may not be subsequently reissued before being submitted to the commission for review ~~and approval.~~"

Rationale: Deleting the indicated text is needed to achieve consistency with the two previous recommended adjustments establishing that the Commission would have the option of reviewing permits but not a requirement to approve permits.

## **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.

In order to appreciate the nature of public comments, it is helpful to understand that Washington Department of Fish and Wildlife (WDFW) initiated simultaneous public comment periods from September 3, 2020 to September 24, 2020: one pursuant to the proposed amendments to WAC 220-500-200 as regulated by the Administrative Procedure Act, and one pursuant to a State Environmental Policy Act (SEPA) Mitigated Determination of Non-Significance 20-043 that WDFW prepared in association with a non-regulatory draft grazing guidance/tools document. Few responders clearly distinguished that specific comments were relevant to the proposed amendment of WAC 220-500-200. Many comments contained suggestions on what should or should not be permitted, but WDFW often found it impracticable to determine what clearly applied to the proposed rulemaking and what applied to the non-regulatory SEPA aspects of the draft grazing guidance/tools document. Comments directly or indirectly pertaining to the proposed rulemaking are summarized below, but WDFW has also prepared a full response to SEPA comments, and in the event that the Commission adopts the proposed amendment to WAC 220-500-200, WDFW will respond in more detail to rulemaking comments in a Concise Explanatory Statement as required. Consulting WDFW's response to SEPA comments may be helpful. These have been posted on WDFW's website.

### **Written Supporting Comments:**

Commenters were asked to indicate whether they agreed, disagreed, or neither as a response to the proposed WAC amendments. Thirty-eight responders agreed, 43 responders disagreed, and 23 responders indicated neither. Many individuals made no specific response to that question, but several of these submitted written comments. For responders who indicated agreement/disagreement/neutrality with the proposed amendments, little correlation was apparent between commenters' responses and the details of their written comments, if they provided any. In several cases, for example, responders indicated that they generally supported the changes but then went on to state that livestock grazing should not be permitted on public lands. In all, 123 of the rule-change submissions included written commentary of some kind; of these, 78 were self-designated as coming from within Washington, 25 were self-designated as coming from outside Washington, and 20 did not designate locations. Many commenters addressed multiple points, some of which were out of scope of the proposed rulemaking.

WAC 220-500-200 currently allows permitted grazing on WDFW lands under certain conditions. Commenters who generally supported the proposed amendments to WAC 220-500-200 tended not to comment on the specific proposed language changes. Instead, they tended to support the idea of grazing in general or at least to support appropriate protective conditions. Those conditions variously included requirements

related to intensity, timing and rotation, monitoring, oversight, fencing, prioritization of wildlife and wolves, etc. and are particularly discussed in the draft grazing guidance/tools document (not in WAC 220-500-200). Several commenters agreed the Commission, or at least a majority of Commissioners, should approve grazing permits.

### **Written Opposing, Neutral, and Other Comments:**

Neutral responses were uncommon. Responders either designated “neither,” without further elaboration, or they suggested that the proposed amendment was vague/insignificant. A few suggested that grazing needed to be economically viable, or that grazing permits should be awarded through public auction. Many commenters did not directly address the proposed amendments to WAC 220-500-200 but instead argued that 1) livestock grazing unavoidably conflicts with WDFW’s mission and/or purpose for managing lands, and should not be permitted under any circumstances; and/or 2) grazing unavoidably leads to wolf-livestock conflict, with negative ramifications for wolves (or) ranchers.

Responders who suggested that grazing conflicts with WDFW’s mission and land management usually did so on ecological grounds, often arguing that grazing was associated with some combination of negative outcomes, including (for example) soil/soil crust disturbance, weed invasion, over-utilization of forage that would otherwise be available to wildlife, direct or indirect displacement of wildlife, risk of disease transmission, non-reduction of fire risk, compromised riparian areas and water resources, conflicts with recreation, and others. Two commenters suggested that an environmental impact statement should be prepared.

Responders who opposed grazing specifically because of wolves typically stated or implied an argument that grazing is closely linked with harm to wolves, that WDFW has a responsibility to protect wolves and not livestock, and that sufficient protections are not/would not be in place. One person suggested that grazing only be permitted in areas of previous pasture or hay cultivation. Some commenters who otherwise supported grazing portrayed the proposed amendments in a negative light due to perceptions that WDFW’s practices would have the effect of shunting the cost of avoiding depredations, or the consequences of actual depredations, to private landowners.

Several commenters did oppose specific existing or proposed language (or in a few cases the lack of specific desired language). These are summarized below:

- Opposition to removal of language clearly requiring that all permits be consistent with “desired ecological conditions”;
- Opposition to the existence of temporary permits (which are currently allowed), or concern that the proposed amendments would somehow exempt temporary permits from standard protective language;
- Opposition to current or proposed exceptions of permits requiring Commission review;

- Opposition to the idea that the Commission should approve (rather than review, with the option of disapproving) permits;
- Opposition to proposed language clarifying that “two weeks” in subsection 5 means cumulative days on site;
- Concern that permit cancellation is not available in a sufficiently wide variety of situations;
- Concern that permits should not be canceled without public review and transparency;
- Concern that proposed or existing language would be bad for the public (or) big game, or that it would inappropriately increase government regulation; and
- Argument that all permits and renewals should undergo SEPA review and also be subject to public review, neither of which is currently required or being proposed with this rule change.

### **Fish and Wildlife Commission Hearing, Public Comments:**

Eight individuals provided verbal testimony at the briefing on October 23, 2020. Several of these individuals reiterated comments and/or topics they had previously submitted electronically. Like the written comments discussed above, these comments were mostly characterized by a lack of specificity about the actual contents of the proposed rulemaking and instead sometimes addressed issues pertinent to the overall SEPA review but not pertinent to the proposed amendment of WAC 220-500-200. Grazing was frequently discussed in generic terms as something that should either be allowed/promoted or not.

Summary points of comments delivered at the briefing:

- Grazing is inconsistent with WDFW’s mission and the cause of unacceptable levels of disturbance to ecosystems and wildlife (wolves in particular).
- Grazing is a valuable land management tool that needs to be logistically feasible for ranchers (who are claimed to bear the brunt of controlling depredations).
- The Commission needs to delay a decision.
- WDFW’s consideration of community character is problematic and that WDFW should prepare an environmental impact statement.
- WDFW does not appropriately consider local/rural community values and the capacity of Conservation Districts to implement conservation.
- WDFW land management inappropriately focuses on game species and hunters.
- WDFW should (or should not) prioritize wolves above livestock.
- Permits should undergo public review.
- Grazing requirements should be as clear as possible.

### **Rationale-Agency Action Regarding Comments:**

Washington Department of Fish and Wildlife is recommending two changes to its earlier proposed amendment to WAC 220-500-200.

First, WDFW's earlier proposed amendment intended to delete reference to the phrase, "desired ecological conditions," because that concept is currently captured in two places within existing WAC language and once within existing Commission Policy language. This deletion was to reduce redundancy and was not intended to change the standard by which grazing leases are evaluated. In response to comments, WDFW agrees that "desired ecological conditions" clearly apply to all grazing permits, not merely the great majority of them. To avoid any suggestion that the WAC revisions are intended to weaken WDFW's review of grazing proposals, WDFW has modified the proposed amendment to leave in the phrase "desired ecological conditions."

Second, WDFW agrees that the Commission should not be asked to approve permits that are subject to commission review, and that instead, the Commission should continue to have the option of disapproving permits within a certain period of time after they are submitted to the Commission for review.

Wolf management—perhaps the single most cited concern by commenters—is actually not addressed in WAC 220-500-200, nor would it be under the proposed amendments. Wolf management itself is regulated elsewhere in WAC and guided by other management plans. No changes are being made to the proposed action in response to comments on wolf management.

WDFW finds that there is a substantial difference between unmanaged (or poorly managed) grazing and properly managed grazing. Many commenters either did not recognize such a distinction, or specifically denied it. Many of the scientific publications cited by commenters opposed to grazing, however, clearly differentiated between inappropriate grazing/overgrazing and appropriate, light-to-moderate, planned grazing, and many scientific studies have recognized that grazing can be managed in a way that is consistent with a variety of different habitat objectives and with the maintenance of general ecological values. The proposed amendments to WAC 220-500-200 would help ensure appropriate grazing management.

WDFW respectfully disagrees with assertions that an environmental impact statement is required in this case because SEPA rules direct that environmental impact statements be prepared in cases of significant environmental impacts are probable from the proposed action. Significant impacts are to be assessed against "existing use," and existing use of WDFW lands includes permitted livestock grazing under certain conditions. The proposed action here involves relatively minor amendments and updates to the grazing rule. Those minor amendments and updates are not likely to cause significant adverse environmental impacts.

In summary, WDFW believes that the proposed amendments and recommended adjustments to WAC 220-500-200 would clarify and bolster the level of oversight and protective condition to which grazing permits are otherwise currently subject, and WDFW recommends adoption of said amendments and adjustments.

WAC 220-500-200 – Current full text

All persons wishing to apply for a grazing permit should contact the Washington Department of Fish and Wildlife, 600 North Capitol Way, Olympia, Washington 98501-1091.

- (1) The director is authorized to enter into grazing permits when the director determines that a grazing permit will be consistent with the desired ecological condition for those lands or the department's 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) All lands covered by any grazing permit agreement shall at all times be open to public hunting, fishing and other wildlife recreational uses unless such lands have been closed by action of the commission or emergency order of the director.

[Statutory Authority: RCW [77.12.047](#), 77.12.020, 77.12.570, 77.12.210. WSR 07-11-017 (Order 07-62), § 232-12-181, filed 5/3/07, effective 6/3/07. Statutory Authority: RCW [77.12.047](#). WSR 03-03-016 (Order 03-03), § 232-12-181, filed 1/7/03, effective 2/7/03. Statutory Authority: RCW [77.12.210](#). WSR 88-23-109 (Order 323), § 232-12-181, filed 11/22/88. Statutory Authority: RCW [77.12.040](#). WSR 82-04-034 (Order 177), § 232-12-181, filed 1/28/82; WSR 81-12-029 (Order 165), § 232-12-181, filed 6/1/81. Formerly WAC 232-12-405.]

February 12, 2021: Recommended amendments to WAC 220-500-200, including recommended adjustments

All persons wishing to apply for a grazing permit for acreage managed by the Washington department of fish and wildlife should contact the Department at P.O. Box 43200, Olympia, Washington 98504-3200.

- (1) The director is authorized to issue grazing permits when the director determines that the grazing permits will be consistent with the desired ecological conditions for those lands and with the department's mission, management objectives, and strategic plan.
- (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 temporary permit shall not exceed one year, and no fee need necessarily be charged.
- (3) With the following three exceptions, grazing permits shall first be submitted to the commission, which may review the permits 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. If, within thirty days, the commission has not disapproved a permit, the director shall be deemed authorized to issue that permit.
- (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.
- (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 re-issue the permit and provide notice of and rationale for non-renewal 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 WDFW 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 condition, 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.

*[CONTINUED ON NEXT PAGE]*

- (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 by the director.

[Statutory Authority: RCW [77.12.047](#), 77.12.020, 77.12.570, 77.12.210. WSR 07-11-017 (Order 07-62), § 232-12-181, filed 5/3/07, effective 6/3/07. Statutory Authority: RCW [77.12.047](#), WSR 03-03-016 (Order 03-03), § 232-12-181, filed 1/7/03, effective 2/7/03. Statutory Authority: RCW [77.12.210](#), WSR 88-23-109 (Order 323), § 232-12-181, filed 11/22/88. Statutory Authority: RCW [77.12.040](#), WSR 82-04-034 (Order 177), § 232-12-181, filed 1/28/82; WSR 81-12-029 (Order 165), § 232-12-181, filed 6/1/81. Formerly WAC 232-12-405.]



FWC Policy C-6003 – Current full text adopted December 6, 2002

The Washington Department of Fish and Wildlife acquires and manages land to protect fish and wildlife and their habitat, maintain biodiversity and provide opportunities for fish and wildlife related recreation.

GENERAL POLICIES: Domestic livestock grazing on Department owned or controlled lands may be permitted if determined to be consistent with desired ecological conditions for those lands, or with the Department's Strategic Plan.

1. Livestock grazing on Department lands is a practice that can be used to manipulate vegetation for fish and wildlife, accomplish a specific habitat objective, or facilitate coordinated resource management. If permitted, livestock grazing must be integrated with other uses to ensure the protection of all resource values, the most important of which is maintaining ecological integrity.
2. Grazing permits are of agency-wide interest. The Department will develop procedures that include a cross-program review to ensure all grazing permits are subject to best available science.
3. New grazing permits will be made available for Commission review before being forwarded to the Director for approval. All grazing permits, excluding temporary permits, must include a domestic livestock grazing management plan that includes a description of ecological impacts, fish and wildlife benefits, a monitoring and evaluation schedule, and a description of the desired ecological conditions.
4. Coordinated Resource Management Plans will be encouraged where appropriate.
5. The Department will promote adaptive management and continued improvement of programs and practices as new knowledge and understanding of habitat ecology becomes available.

February 12, 2021 Recommendation: Amended FWC Policy C-6003

GENERAL POLICIES: Domestic livestock grazing on Department owned or controlled lands may be permitted if consistent with WDFW's conservation mission and WAC 220-500-200.

1. Permitted livestock grazing on Department lands has several roles, including managing vegetation for wildlife, enhancing recreational opportunity, encouraging conservation across multiple ownerships on landscape scales through coordinated resource management, and protecting community character.
2. Permitted livestock grazing must be integrated with other uses, ensure that ecological integrity is maintained, and be consistent with any constraints tied to fund sources used to acquire or manage lands.
3. Except for temporary permits, grazing permits will be made available for internal Department cross-program review to ensure that all grazing permits are subject to best available science.
4. The Department will promote adaptive management and continued improvement of programs and practices as new knowledge and understanding of habitat ecology becomes available.



# 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 <a href="http://wdfw.wa.gov/about/commission/meetings">http://wdfw.wa.gov/about/commission/meetings</a> or contact the Commission office at (360) 902-2267 or <a href="mailto:commission@dfw.wa.gov">commission@dfw.wa.gov</a> 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](mailto: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](mailto: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)<br>(Internal government operations) | <input type="checkbox"/> RCW 34.05.310 (4)(e)<br>(Dictated by statute)   |
| <input type="checkbox"/> RCW 34.05.310 (4)(c)<br>(Incorporation by reference)     | <input type="checkbox"/> RCW 34.05.310 (4)(f)<br>(Set or adjust fees)  |
| <input type="checkbox"/> RCW 34.05.310 (4)(d)<br>(Correct or clarify language)    | <input type="checkbox"/> RCW 34.05.310 (4)(g)<br>((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

**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 ((~~of~~)) by the director.