



## Fish and Wildlife Commission Presentation Summary Sheet

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**Meeting date:**

10/28/2023

**Agenda item:**

F. Petition: Petition to amend the Washington Administrative Code to bring clarity, accountability, and transparency to Washington's wolf management decisions – Briefing, Decision

**Presenter(s):**

Julia Smith, Endangered Species Recovery Section Manager, Wildlife Program

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**Background summary:**

The Commission will consider a petition for rulemaking, pursuant to RCW 34.05.330, received on September 15, 2023 from Washington Wildlife First, the Center for Biological Diversity, Western Watersheds Project, WildEarth Guardians, Northwest Animal Rights Network, Coexisting with Cougars in Klickitat County, Cascadia Wildlands, Animal Wellness Action, Center for a Humane Economy, Kettle Range Conservation Group, and the Endangered Species Coalition (Petitioners). The petition makes two requests:

- 1) The first relates to codification of WDFW expectations and processes around lethal and non-lethal deterrents. The petition requests that the Commission create a new rule to incorporate more restrictive standards relating to the use of lethal and non-lethal deterrents to address wolf-livestock conflict. Petitioners assert WDFW resorts to lethal removals too often and Petitioners' proposal would put requirements for specific non-lethal deterrents in rule, whereas currently WDFW's expectations are set forth in the [2011 Wolf Conservation and Management Plan](#) (Wolf Plan) and the [2017 Wolf-Livestock Interaction Protocol](#) (Protocol). They assert their proposed rules will provide certainty, transparency, and accountability in wolf management decisions.
- 2) The second request relates to potential amendments of WAC 220-440-080 ("Killing wolves attacking domestic animals") which protects livestock owners from potential criminal enforcement if they kill a wolf attacking domestic animals and other conditions in the WAC are met. Petitioners would like to amend the rule to make it legal to kill a wolf under this rule only once depredation by wolves has already occurred and contingent upon a permit issued from the Director, along with other restrictions (e.g., the producer could only protect livestock, excluding other domestic animals such as pet and livestock guardian dogs).

*A. Prior petitions for rulemaking and litigation about lethal removal of wolves*

This is the fifth time the Commission has received a very similar petition from many of the same people and/or

organizations. Environmental organizations filed similar petitions in 2013, 2014, 2020, and 2023. Petitioners switched their focus from petitions to lawsuits from 2017–2019; all of these lawsuits were either dismissed or the court ruled in favor of WDFW. Environmental organizations filed another petition in May 2020, which was denied by the Commission. In September 2020, Governor Jay Inslee approved the petitioners’ appeal and directed WDFW to initiate rulemaking. That rulemaking process, which involved scoping and meeting with diverse stakeholders, developing rule language, completing an Environmental Impact Statement, completing a Small Business Economic Impact Statement, reviewing and responding to more than 10,000 public comments, and engaging in the Commission rulemaking process, took two years to complete. The Commission voted on July 8, 2022 not to adopt a rule.

Prior petitions for rulemaking and litigation activity	Period
Petition for rulemaking filed (withdrawn)	July 2013
Petition for rulemaking filed (denied by Commission)	June 2014
Petitioners appealed the Commission’s decision, appeal denied by Gov. Jay Inslee	2014
WDFW contracted with Human-Wildlife Conflict Collaboration (HWCC) to assess the social conflict around wolves	2014
Francine Madden of HWCC completed <a href="#">a report that discussed in detail the levels of conflict in Washington</a> and strategies to transform the conflict into opportunities for social change	March 2015
WA legislature invests \$1.6M over 4 years in contract with HWCC for strategic guidance, to facilitate the WAG process, and increase the WDFW’s capacity to resolve deep rooted and identity-based conflict	Spring 2015
Petitioners challenged WDFW’s lethal removal actions and use of collaboratively developed wolf-livestock interaction protocol in several lawsuits. Several different Washington State Superior Court judges considered and rejected APA and SEPA claims against WDFW—to date, none of WDFW’s lethal removal decisions have been found unlawful or improper in court	2017 - 2020
Petition for rulemaking filed (denied by Commission)	May 2020
Petitioners appealed the Commission’s decision, appeal approved by Gov. Jay Inslee	September 2020
WDFW conducts extensive rulemaking process including <a href="#">scoping</a> , <a href="#">CR-102</a> , <a href="#">Final SEIS</a> , and <a href="#">SBEIS</a> and public comment periods	Oct. 2020 – July 2022
Commission votes not to adopt wolf rule	July 8, 2022
Petition for rulemaking filed (withdrawn)	July 2023
Petition for rulemaking filed	September 2023

*B. The Wolf Plan, Wolf-Livestock Interaction Protocol, and prioritization of non-lethal conflict mitigation tools*

**WDFW champions the proactive use of non-lethal deterrents to minimize wolf-livestock conflict and only considers lethal removal as a last resort when those tools have not mitigated conflict.** WDFW’s spending reflects that commitment, with more than 80% of the budget for wolf-livestock conflict spent on non-lethal approaches. The number of livestock producers in Washington implementing proactive, non-lethal deterrence measures has markedly increased. Mitigating livestock depredation by wolves is critical to acceptance of wolves by local communities.

WDFW’s recovery efforts for wolves are guided principally by the Wolf Plan. Although the Wolf Plan prioritizes use of non-lethal tools, it expressly recognizes the potential use of lethal removal to resolve repeated livestock depredations. WDFW subsequently developed non-binding guidance (the Protocol) to address the use of non-lethal conflict deterrents and lethal removals. The Protocol restates the lethal removal guidance contained in

the Wolf Plan but includes more details to inform the implementation of the Wolf Plan. The Protocol provides a list of example conflict deterrence measures, including range riding, human presence, protection of calving/lambing areas, avoidance of wolf activity centers, use of scare devices, use of guardian or herding dogs, carcass sanitation, permanent and portable fencing including fladry/turbofladry, and delayed turnout of livestock. This list is also captured in WDFW's [Livestock-Wolf Mitigation Measures document](#) for livestock producer and WDFW use. The Protocol also provides guidance on working with livestock owners to proactively implement non-lethal measures and expectations for their use, how to confirm a wolf depredation event, the number of livestock killed or injured before WDFW would typically consider lethal removal, communications with the public, and potential implementation of lethal removal of wolves.

Notably, most wolf packs in Washington are not implicated in livestock depredation (86% on average over 14 years). The level of documented depredations (ranging from four to 45 individual animals injured or killed in confirmed or probable wolf depredation incidents annually, with an average of 24 per year from 2012 through 2020) has remained relatively low compared with the number of livestock on the landscape, despite an increasing wolf population. Depredation incidents occur almost evenly across public and private land (including private industrial timber land), with an average of 51% of incidents occurring on public land from 2012 – 2021.

Livestock depredations and associated lethal removal decisions are perhaps the most contentious issues in wolf management, but WDFW consistently works to bridge the gap of different perspectives and cultures. Many Washington citizens would prefer earlier action to kill wolves that attack livestock; conversely, other citizens would prefer deferred (or no) lethal action. Although use of lethal control as a strategy to promote wildlife conservation is difficult considering the history of wolf eradication in the United States, “short, selective removal of problem animals by government agents may be necessary to protect wildlife from extinction via widespread, illicit retaliation”<sup>1</sup> and “when highly endangered species kill livestock or take human lives, the best form of lethal control is highly accurate, selective removal of ‘problem’ animals by formally appointed and trained agents.”<sup>1</sup>

WDFW has repeatedly considered the experiences of other states supporting wolf recovery, numerous scientific studies, and diverse (often divergent) perspectives of individuals directly affected by or generally concerned about lethal removal decisions. WDFW's Wolf Plan and Protocol reflect compromises between these different interests and **the number of wolf packs, successful breeding pairs, and individuals in Washington has continued to increase every year since resident wolves were first documented in the state, while levels of livestock depredation and wolf removals have remained low even with wolf range expansion and population increase.**

### *C. WAC 220-440-080 (Killing wolves attacking domestic animals)*

This rule allows an owner of domestic animals, the owner's immediate family member, the agent of an owner, or the owner's documented employee to kill one gray wolf without a permit issued by the director, regardless of its state classification, if the wolf is attacking their domestic animals (only where wolves are not federally endangered). WAC 220-440-080 is an important rule that allows livestock producers to protect their livestock, guardian dogs, and pets from imminent wolf attacks and allows for an immediate response to wolf-livestock conflict that may reduce prolonged, chronic patterns of depredation and the need for agency lethal removal. From 2013 (when the rule was adopted) to September 2023, eight wolves (two in 2017, two in 2019, three in

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<sup>1</sup> Treves, A., and L. Naughton-Treves. 2005. Evaluating lethal control in the management of human– wildlife conflict. Pages 86-106 in R. Woodroffe, S. Thirgood, and A. Rabinowitz, editors. *People and wildlife: conflict or coexistence?* Cambridge University Press, Cambridge, UK.

2022, and one in 2023) have been confirmed to be legally killed under this rule (fewer than one per year on average).

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**Staff recommendation:**

WDFW staff recommend that the Commission deny the petition.

Regarding initiating rulemaking to create a new rule to incorporate more restrictive standards to address wolf-livestock conflict:

1) WDFW's Wolf Plan and Protocol reflect compromises among diverse perspectives and the number of wolf packs, successful breeding pairs, and individuals in Washington has continued to increase every year since resident wolves were first documented in the state, while levels of livestock depredation and wolf removals have remained low even with wolf range expansion and population increase;

2) Social science research demonstrates that people respond more favorably to conservation initiatives when the systems in which they operate recognize their autonomy, enhance and affirm their competencies, and create mutual respect and trust.<sup>2,3,4,5</sup> Imposing a regulatory approach would likely undermine one-on-one relationships with local WDFW staff as well as acceptance and implementation of proactive, non-lethal tools by livestock producers who have been cooperating with WDFW on non-lethal conflict deterrence strategies. Furthermore, a recently published study<sup>6</sup> highlights barriers that hindered rancher participation in non-lethal wolf-livestock coexistence strategies, including disdain for regulation; and

3) WDFW staff strongly believe the complex issue of wolf-livestock conflict is best addressed not by codification of rules but instead with the following strategies:

- Allowing local WDFW staff to build one-on-one working relationships and trust with community members who live with wolves and are affected directly by wolf-livestock interactions and conflict
- Continuing to build on years of collaborative process and relationship building through the Wolf Advisory Group to develop guidance from a broad spectrum of Washingtonians' perspectives
- Continued investment in and promotion of proactive non-lethal conflict deterrence practices at a statewide and local level, particularly in areas with novel wolf presence and/or that are not well-resourced

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<sup>2</sup> DeCaro and Stokes. 2008. Social-psychological principles of community-based conservation and conservancy motivation: attaining goals within an autonomy-supportive environment. *Conservation Biology* 22:1443-1451.

<sup>3</sup> Wilson et al. 2014. Human-grizzly bear coexistence in the Blackfoot River Watershed, Montana: getting ahead of the conflict curve. Pages 177–214 in S.G. Clark and M.B. Rutherford, editors. *Large carnivore conservation: integrating science and policy in the North American West*. University of Chicago Press, Chicago, Illinois, USA.

<sup>4</sup> DeCaro et al. 2015. Synergistic effects of voting and enforcement on internalized motivation to cooperate in a resource dilemma. *Judgment and Decision Making* 10:511–537.

<sup>5</sup> Wilson et al. 2017. Learning to live with wolves: community-based conservation in the Blackfoot Valley of Montana. *Human–Wildlife Interactions* 11:4.

<sup>6</sup> Bogezi et al. 2021. Ranchers' perspectives on participating in non-lethal wolf-livestock coexistence strategies. *Frontiers in Conservation Science* 2:1–12.

- Exploration of new programs/resources (e.g., carcass composting facilities, pay for presence incentives, pursuing partnerships to find range riders where they are not readily available) to address ongoing challenges

Regarding initiating rulemaking to amend WAC 220-440-080:

1) This is an important rule that allows people to protect private property. It has resulted in relatively few wolf deaths over a decade (fewer than one per year on average). WDFW staff have concerns that if the rule is made too restrictive and does not reasonably allow for killing a wolf attacking livestock, working dogs, or pets, these actions would not be reported to WDFW for fear of criminal enforcement, increasing undocumented wolf mortality and impeding WDFW from tracking mortality sources and trends.

2) Although there is room to clarify the language in this WAC, the legal and policy issues affecting this WAC are complex and WDFW needs to do more analysis before developing proposed rule amendments.

3) Rulemaking can be initiated at any time once the Commission has addressed how and whether this item takes priority over other major Wildlife Program items the Commission is already working on (e.g., Game Management Plan, bear and cougar science and policy, black bear timber damage rulemaking, etc.) and other wolf policy priorities.

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**Policy issue(s) and expected outcome:**

If the Commission denies the petition, no rulemaking will take place and WDFW will continue to address wolf-livestock conflict using the Wolf Plan and Protocol. Rulemaking to amend WAC 220-440-080 will not be initiated now but could be initiated in the future.

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**Fiscal impacts of agency implementation:**

No fiscal impacts if petition is denied. Initiating rulemaking would have a fiscal impact, the total amount of which is undetermined at this time but expected to be substantial. The previous and nearly identical rulemaking undertaken by WDFW from 2020-2022 took hundreds of hours of staff time to meet and work with stakeholders on rule ideas, develop rules, complete an Environmental Impact Statement, review and respond to public comments, and conduct the rulemaking process with the Commission. WDFW also worked with a contractor to complete a Small Business Economic Impact Statement, which cost \$38,632.50. Adopting the proposed rule as presented by Petitioners would have a fiscal impact, which is undetermined at this time, for the staff resources to implement the rule.

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

The public were given notice of this petition through the Commission agenda and had the opportunity to submit written comment. A public engagement process will occur if rulemaking occurs in the future.

For more information about prior public involvement processes on the same issue, see Appendix D (pg. 73) of the [Wolf-Livestock Conflict Deterrence Rule Making Final Supplemental Environmental Impact Statement](#) (2022) for a summary of the extensive public outreach completed during the last rulemaking process.

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

WDFW recommends that the Commission deny the petition.

As a future next step, the Commission could consider rulemaking to amend WAC 220-440-080, but WDFW staff recommend doing so only after 1) further analysis of the legal and policy issues and 2) addressing how and whether this item takes priority over other major Wildlife Program items the Commission is already working on (e.g., Game Management Plan, bear and cougar science and policy, black bear timber damage rulemaking, etc.) and other wolf policy priorities.

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**Draft motion language:**

Motion: I move to deny the petition.

Is there a “second”?

If so, then motion maker discusses basis for motion; other Commissioners discuss views on motion; amendments, if any, proposed and addressed.

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**Post decision communications plan:**

WDFW staff will respond to the petitioners in writing regarding the Commission’s decision.

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