

Washington Department of Fish and Wildlife

2021 Wolf Commission Rulemaking – Intakes Summary

Staff did 30+ intake calls from a diversity of people/perspectives, including Fish and Wildlife Commissioners, WAG members, petitioners, environmentalists, livestock producers, and WDFW staff. In the calls we asked:

1. What are your expectations of the rule?
2. What concerns do you have?
3. What process ideas do you have for the Department in terms of drafting the rule?

In terms of process, we distilled these four main ideas from the intakes:

- Start with petitioner's recommendation
- Use the WAG process
- Use other stakeholder process
- Follow standard Commission process

Recommendation: We already have an advisory group focusing on expectations for non-lethal and lethal tools. Given that, our proposed recommendation for developing the rule includes:

1. Form a small internal group to draft the rule.
2. Present draft rule to Commission's wolf committee and WAG for feedback. Consider other virtual meeting(s) with stakeholders.
3. Staff complete draft rule, ready for SEPA and SBEIS processes.
4. File CR-102 with SEPA and SBEIS (likely need to file in Jan 2022).
5. Coordinate with external entities on important dates, comment periods, etc.
6. Consider public webinar to describe draft rule and rationale, and important process dates.

Detailed information

Rule development content options

Alternatives

1. Status quo - rule directs Director to use guidance of plan and protocol
2. Rule directs Director to use guidance of plan and protocol, except in Special Focus Areas (areas of chronic conflict). In Special Focus Areas, codify expectations for use of non-lethal and lethal tools, and considerations for decision process for lethal
3. In Special Focus Areas, codify expectations for use of non-lethal and lethal tools, and considerations for decision process for lethal
4. Codify some portions of protocol
5. Use petitioner's language as foundation
6. Seek guidance from commission on what should be codified

Rule development process options from now until issue of CR-102

Process option 1:

- Form a small internal group to create a draft rule concepts document. Incorporate values from WAG process on same subject, intake calls, and petition as much as possible.
- Internal team present rule concepts document to small diverse stakeholder group:
 - Set sideboards on process (e.g., no rule not an option, the group is not crafting exact rule language). Schedule a set number of meetings for feedback.
 - First meeting – stakeholder feedback on concepts.
 - Second meeting – stakeholders on draft rule (pre-CR-102).
 - Last meeting – stakeholders on draft rule (pre-CR-102).
- Draft rule ready for SEPA and SBEIS process.
- Coordinate with external entities on rule making process, comment periods, etc.
- File CR-102 with SEPA and SBEIS (likely need to file in Jan 2022).
- Consider public webinar to describe draft rule and rationale and important process dates.

Process option 2:

- Form a small internal group to draft the rule. Incorporate values from WAG process on same subject, intake calls, and petition as much as possible.
- Internal team present draft rule to Wolf committee
- Internal team present draft rule to WAG and/or stakeholder group
 - WAG/stakeholder group provide feedback
 - Could use a survey tool to collect broader feedback; may be problematic for rural communities
 - Consider other process steps like virtual meeting during APA process.
- Draft rule ready for SEPA and SBEIS process.
- Coordinate with external entities on rule making process, comment periods, etc.
- File CR-102 with SEPA and SBEIS (likely need to file in Jan 2022).

- Consider public webinar to describe draft rule and rationale and important process dates.

Ideas and information from intakes

Summary of process ideas captured:

1. WDFW use petitioners recommended rule or consult with petitioners
 2. WDFW staff draft the rule
 3. WDFW use one-on-one intakes to draft rule
 4. WDFW draft rule for WAG comment/review
 5. WDFW use WAG to develop rule
 6. WDFW use WAG to develop bulk of the rule; WDFW work with commission to develop other portions
 7. WDFW draft rule then share with stakeholder group
 8. WDFW use diverse stakeholder group (one or more meetings) to draft rule. This could use a third-party mediator
 9. WDFW use individual identity stakeholder groups (one or more meetings) to draft rule
 10. WDFW conduct a public scoping opportunity for rule ideas
 11. WDFW conduct survey for feedback on draft rule
 12. Allow opportunity for public comment prior to CR102
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Detailed content ideas and concerns from intakes:

<i>Protocol content ideas</i>	<i>Protocol concerns</i>
<ul style="list-style-type: none"> - In rule reference protocol and number of times reviewed. - Should codify protocol or make it a little more formal. - The most important part of the protocol that should be in rule is communication. - Does not want protocol as written to be codified. - Write a rule that captures the current protocol and Section 9 work—should be process-oriented but mandate a process. Should maintain decision-making flexibility for Director. 	<ul style="list-style-type: none"> - The protocol itself wasn't written to be codified—prefer adaptive management - The protocol keeps WDFW focused on here and now—what is the life of this new rule? Will it be different when wolves are delisted? - “Flexibility that never goes in livestock producers’ favor”
<i>Nonlethal tools content ideas</i>	<i>Nonlethal tools concerns</i>
<ul style="list-style-type: none"> - Nonlethals should be prescriptive in rule - Livestock producers coordinate with WDFW to select appropriate nonlethal tools (a number may not make sense) - Minimum of 3-4 days/week range riding, closely define what human presence is, use as many nonlethals as possible. - Fence dump sites. - Commission doesn't have authority to codify nonlethal tools. 	<ul style="list-style-type: none"> - Livestock producers don't buy that others are going to pay for nonlethal tools, range riding, etc. It's unsustainable. - Need to recognize that the shelf-life of nonlethals gets shorter and shorter. - If livestock producers are already doing these things (nonlethals), what is the problem with regulating them? - A push for additional collars is just a push to be able to kill more wolves

<ul style="list-style-type: none"> - Nonlethals need to be in place a certain amount of time prior to a depredation for it to "count" - When there are known den/rendezvous sites, move livestock grazing away from those areas, prevent watering/salting areas near den/rendezvous sites - Use language that it's a "best-effort" when learning new stuff or as it's evolving. - Three best tools are range riding, guardian dogs, and husbandry - Include requirement for record keeping, dedicated to evaluate different conservation measures, to promote sustainable tools—it's a benefit to all - Has to be more than just a checklist, perhaps a certificate of success. - If cattle are on the kind of terrain that cannot be defended, they graze at their own risk. Ear tags on cattle may help in that situation. - Remedial steps should be taken when a depredation occurs. Were nonlethals employed appropriately and effectively? - Could compensated more in conflict areas, or receive some sort of incentive for not grazing area 	<ul style="list-style-type: none"> - Data sharing – wolf activity center/kernel density estimate/"blue blob" could be one of the best tools to prevent depredation. It does involve moving cattle, but not off the allotment, just away from the activity center. That should be what data sharing is. The only reason to have point data is to find dead cattle (the "race to the count"), rather than finding live cattle proactively before issues have started, which could be done most effectively using wolf activity centers. - At the end of the day, WDFW bears the burden of doing all the nonlethals—the more handholding WDFW does, the harder it will be to enforce use by livestock producers - If a wolf pack has switched to livestock, what tool do you use? - Need to manage expectations of "all kinds of nonlethal tools"—how do we come up with new ideas?
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<i>Range riding content ideas</i>	<i>Range riding concerns</i>
<ul style="list-style-type: none"> - Don't get hung up on range riding, WDFW can't support it long-term. Focus on carcass removal, fencing off dump pits, fixing fence. - Need to define effective range riding. Urge to look beyond WAG's definition of range riding. - Be specific about range riding and human presence, everything else needs to be flexible. - Use the definition of range rider from the RFQ across the board - Include what is considered adequate range riding and documentation 	<ul style="list-style-type: none"> - Worried that writing anything about range riding in rule will make people think it's the gold standard for all situations - Big concern is funding—if we can't fund range riders, will WDFW be out of compliance? - There are some allotments where range riding adequately is impossible. Why should wolves and the public pay the price on that? Terrible public relations for WDFW. - If WDFW puts range riding into rule, where are they going to get all these range riders?
<i>Lethal thresholds content ideas</i>	<i>Lethal thresholds concerns</i>
<ul style="list-style-type: none"> - When there are 3 depredations in 30 days, need to take action within two weeks of a decision being made - When there is a depredation, there needs to be quick retaliation to the pack. The first step does not have to be lethal removal, but needs to change behavior in adequate way. - Cannot take lethal removal off the table. Action needs to be quicker instead of slower in some situations. - Add rigidity to the lethal thresholds 	<ul style="list-style-type: none"> - If it is in recipe format, WDFW would end up conducting or not conducting lethal when gut says yes or no - An injury to livestock means already there, wolves are into livestock. A lot easier to take out fewer wolves earlier than a whole pack later. - Producers would welcome use of permits, but if that was the only thing that happened and DFW didn't do anything, that wouldn't be enough

<ul style="list-style-type: none"> - Lethal section needs flexibility, situations really vary. - Lethal removal of wolves shouldn't be on the table on public land - Do not want lethal thresholds to be hard and fast. Wants success to be stopping depredations, not a dead wolf. - Lethal thresholds shouldn't be rule—it should be about stopping depredations, rather than killing a certain number of wolves - Lethal recommendation could come from ground crew or regional director - Allow for removal permit (open for couple of months), eligible to include different land ownerships - Okay with lethal for neighbors doing the right thing who are experiencing depredation - No more wolves should die for producers who are not compliant (not in support of going to lethal at higher number of depredation) - If folks come up with enhanced nonlethal protocol, need to come up with enhanced lethal protocol—not wait three weeks for a signature 	<ul style="list-style-type: none"> - What triggers not considering lethal—is it whether wolves have been killed every year? is it whether nonlethals are adequate? - Have to control wolf populations, not have less lethal removal - Why so many wolves killed for one producer? - Wants to see what is happening in Washington to change (lethal removal in same place annually) - Lethal is not always possible - Producers see Section 9 as state backing away from lethal removal in areas where it's needed most.
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Rule language content ideas	Rule language concerns
<ul style="list-style-type: none"> - Washington has a spirit of innovation and looks for new ways to coexist with wolves that are supportive of livestock producers and hunters, with lethal removal as a last resort - Outreach/education should be in rule - Rule should be overarching principles department uses for management to minimize and reduce conflict - Minimum of expectations spelled out in WAC with best available science and adaptive management - Rule is to set policy and implementation - Rule should be a broad cast in terms of who it effects. - Avoid bringing different rule options - Would hate to see any tools removed, we need as many as possible—"policies outlast governors" - Any tool is a tool in the toolbox. If any tool doesn't work, you don't keep using it (that includes lethal). That needs to have a rule around it, needs to be written to address it. - Several statements related to WAG philosophy about nonlethals that should be in rule and lethal being available as a tool 	<ul style="list-style-type: none"> - Rule has to seek a balance between being overly prescriptive but has management flexibility when it comes to lethal removal - A rule could be too rigid/restrictive to achieve what we want - Changing Chronic Conflict Zones to Special Focus/Resource Areas is ridiculous--call it what it is. - WDFW mandate is to perpetuate wildlife, not livestock. - The priority on public lands should be wildlife - Would prefer no rule, it will only make things worse - Commission's authority is "time, place, and manner in a way that does not impair the resource" rules. Moving in another direction will erode trust further; this could be applied to listed species but it's a slippery slope. - Don't write rule around outliers, but outliers show what can happen. - Exigent circumstances—don't want to have outlying exception define what rule is and don't want to try to define every situation

<ul style="list-style-type: none"> - What shouldn't be in rule is the statement, "preserving community character." That's so subjective to interpretation. Keep rule clinical. - Rule needs to be in the context of a recovered wolf population - Rule should lean heavily on science - Section 9 might work in rule if broadly written - Don't need sunset clause in rule (related to wolf delisting) - Describe broadly the problem (small pastures vs. large pastures/allotments—range riding, targeted human presence)—needs to be spelled out for producers and the public so that expectations are known - Parameters in rule should be adaptable to situation—one size does not fit all (small pasture vs. large allotment). Have to manage those places differently. - Include caught-in-the-act and relax caught-in-the-act circumstances - Look at conflict rules for elk in orchards, bear timber damage, etc. - Issue of being more prescriptive on public land vs private land. - Chronic conflict is not necessarily a geographic space—there can be a special focus operation, too. Define it by an operation that is continually having issues—if that operation were doing what it was supposed to, we wouldn't be having this conversation 	<ul style="list-style-type: none"> - When a species is in recovery, we bend over backwards to do everything we can to help that species - Want everyone to operate by same rules. - Expectations and predictability are important for livestock producers - Biggest concern goes back to recent cougar rulemaking—WDFW providing multiple options and the Commission choosing the worst one. Would really like to ensure that multiple options are palatable and won't exacerbate conflict - Set it in stone so that nothing is open to interpretation—anything open to interpretation is problematic - Treat wolves like bear and cougar. Think about this 10 years from now, recovered, doesn't look the same as now. - Local wolf population status is important.
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<i>Accountability content ideas</i>	<i>Accountability concerns</i>
<ul style="list-style-type: none"> - Nonlethals put in place prior to the grazing season - producers have to use nonlethals prior to any depredation and prior to any kill order - Producers have to do nonlethal deterrence measures before WDFW will kill wolves - Limit lethal as much as legally possible, especially for non-compliant livestock producers, people not doing everything in their power. - Conflict mitigation plan is good for the season—people cannot change halfway through. If they don't collaborate from the beginning of the season, lethal should be off the table for the year and they can try again next year. - If producers are on public lands, they need to do X number of measures (carcass sanitation) - Lethal will not occur if nonlethal requirements haven't been met to X standard. 	<ul style="list-style-type: none"> - If we need to rewrite guidance and codify it, that's fine, but don't put it in there with a big club behind it - There is a double standard, department can say, "too hard, we are not doing that," but producers have to do it. - It is essential for public to know that people are managing with accountability, enforceability, transparency - Ensure that tax dollars are being well spent. - If it's on public lands using public funds, that needs to be in consideration, even when wolves are not listed as endangered.

- Need documentation that nonlethals were deployed. Accountability on public lands needs to be in rule. Livestock producers should be checking on cattle daily.
- There are expectations for when WDFW will conduct lethal removal, so we really want to have expectations for livestock husbandry.
 - o Part A – Ask livestock producers to take measures to protect endangered species
 - o Part B – lethal removal of endangered species only happens if plan is abided by—lethal only occurs if X happens
- Use a lock-in incentive program (e.g., the state will not pay for wolf removal unless livestock producers do A, B, and C; can do X to volunteer yourselves for that program)
- Say in rule that producers have to sign up for cooperative agreements—have to commit to cooperative agreement to be eligible for lethal control
- If the Commission just deals with compliance and leaves WDFW team to make decisions, that would minimize the impact on the WAG process
- To receive compensation on public land, need a plan in place with conflict specialists.
- Rule should include accountability of what WDFW is expected to do.

Sociopolitical concerns

- If rule doesn't pass, it will be legislation next year.
- \$20,000 to kill a wolf - 28 x 20,000 is close to half a million before thinking about any other cost. It is a misuse of public funds and not sustainable. We can't do this forever.
- Some people say poaching will happen because of the rule so it shouldn't be too stringent--that is extortion and not an appropriate argument.
- "Enforceable" means environmental groups want to control the process using the courts
- Concerned WDFW drafts rule, then gets pressured. Environmentalists put pressure on legislature, Governor, or take to courts.
- Can't let political influences supersede that wolves are wildlife
- Governor's letter helps determine the ceiling and floor. If any of those 4 bullets are not answered to, the conservation community will push back. If there is clear and enforceable language around those 4 bullets, then would be satisfied.
- Doing rulemaking has potential to alienate the ranchers who we have been able to bring on board to do nonlethals
- Sometimes doing extra process inflames system
- People hate going into another grazing season without a plan in place.
- Upsets me greatly that Governor is managing wildlife, Commission and WDFW should do that
- Livestock producers are taking up too much space in the conversation.

- The livestock industry is doing what they can to subvert progress. What WAG comes up with will not be sufficient to meet needs in rule.
- This has the potential to blow up WAG; if the Commission becomes prescriptive, they would lose WAG
- Want to prevent process from becoming WAG vs. Commission
- Director needs flexibility, would like Governor to support WAG process.
- Rule has to honor: Governor, WAG, WIG, Commission, Director. Need to understand each of their values.
- If the Commission wants to take this from WAG, it's their prerogative, but would be frustrating because WAG has the expertise.
- The rural voice/eastern WA voice on the Commission and WAG is getting fainter
- Scared about what to ask of livestock producers, because worried about livestock producers breaking even. This makes it harder for producers to stay in business. Need to keep livestock producers in business.
- Section 9 needs to not be single-species management of wolves, need integrated predator-prey management (cougars reduce prey population before wolves get there)
- Hold WDFW's feet to the fire to increase prey population where depredations are occurring
- Laws take a lot longer to change than guidance; science isn't clear