



# PROPOSED RULE MAKING

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

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DATE: February 16, 2022

TIME: 7:41 AM

WSR 22-05-092

**Agency:** Washington Department of Fish and Wildlife (WDFW) P22-06

**Original Notice**

**Supplemental Notice to WSR** \_\_\_\_\_

**Continuance of WSR** \_\_\_\_\_

**Preproposal Statement of Inquiry was filed as WSR 20-21-039 on October 13, 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 220-440-260 Wolf-livestock conflict deterrence in chronic conflict areas.

WAC 220-440-080 Killing wolves attacking domestic animals.

**Hearing location(s):**

Date:	Time:	Location: (be specific)	Comment:
April 8, 2022	8:00 a.m.	Webinar	This meeting will take place by webinar. The public may participate in the meeting. Registration is required to testify at the public hearing. Registration deadlines and registration forms are available 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.

**Date of intended adoption:** May 13, 2022 (Note: This is **NOT** the **effective** date)

**Submit written comments to:**

Name: Julia Smith

Address: PO Box 43200, Olympia WA. 98504

Email: [WolfConflictDeterrence102@PublicInput.com](mailto:WolfConflictDeterrence102@PublicInput.com)

Fax: Phone Voicemail Comments: 855-925-2801 project code: 3861

Other: Website: <https://publicinput.com/WolfConflictDeterrence102>

SEPA Public Comment: [SEPAWolfConflictDeterrence@PublicInput.com](mailto:SEPAWolfConflictDeterrence@PublicInput.com)

SEPA Voicemail Comment: 855-925-2801 project code: 6659

Rule Making Website: <https://wdfw.wa.gov/about/regulations/development/wolf-livestock-conflict-deterrence>

By (date) April 11, 2022

**Assistance for persons with disabilities:**

Contact Title VI/ADA Compliance Coordinator

Phone: 360-902-2349, TTY (711)

Fax:

TTY:

Email: [Title6@dfw.wa.gov](mailto:Title6@dfw.wa.gov)

Other: <https://wdfw.wa.gov/accessibility/requests-accommodation>

By (date) April 9, 2022

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

These proposals are in response to a decision by Governor Jay Inslee in September 2020 to grant a petition for rule making directed to the Washington Fish and Wildlife Commission relating to wolf management with the goal of instituting practices that will avoid the repeated loss of wolves and livestock in Washington. Accordingly, Washington Department of Fish and Wildlife (WDFW) is proposing a new rule section WAC 220-440-260 and amendments to the current WAC 220-440-080.

Under the umbrella of the 2011 Wolf Conservation and Management Plan goals, the purpose of amending a rule and adopting a new rule related to wolf management in Chapter 220-440 WAC is to:

- 1) establish procedure for identifying WDFW expectations for use non-lethal tools to mitigate wolf-livestock conflict in areas of chronic conflict, while recognizing the use of non-lethal tools is encouraged statewide; and
- 2) establish criteria for the use of WDFW's lethal removal authority in areas of chronic wolf-livestock conflict.

WDFW focuses on proactive use of non-lethal deterrents to minimize wolf-livestock conflict and considers lethal removal as a last resort when those tools have not mitigated conflict. Although WDFW promotes and encourages the use of non-lethal measures to deter wolf-livestock conflict through non-binding guidance, current law does not explicitly require implementation of non-lethal conflict deterrence measures appropriate for the conflict scenario prior to agency authorization of lethal removal of wolves. Proposed changes to WAC 220-440-080, if adopted, would require that, to authorize lethal removal of wolves, the WDFW director (or WDFW staff designee) would need to confirm an owner of domestic animals has proactively implemented appropriate non-lethal conflict deterrence measures.

The proposal would also create a new rule (WAC 220-440-260) that directs WDFW staff to author conflict mitigation plans. These plans would establish area-specific criteria for the use of non-lethal and lethal measures to mitigate wolf-livestock conflict in areas of chronic conflict (pack territories [or a portion thereof] where wolf depredations of livestock occurred and lethal removal of wolves was authorized in two of the last three years). WDFW would author the conflict mitigation plan(s) in consultation with willing, affected livestock producers, as well as federal, state, and tribal agencies that manage lands and/or wildlife in the designated chronic conflict area. The plan would specify non-lethal deterrence measures that are appropriate for the chronic conflict area according to the professional judgment of WDFW staff. Additionally, the rule would outline criteria for lethal removal of wolves in chronic conflict areas, as determined on a case-by-case basis.

The proposed WAC changes attached to this notice do not include provisions specific to range riding. Through this CR-102 notice, WDFW is providing and soliciting comment on optional additional language for inclusion in the rule (in section 2 of proposed WAC 220-440-260, immediately preceding the final sentence of section 2) for the Commission's consideration to address the use of "range riding," as follows:

"If range riding (e.g., livestock husbandry, active monitoring of livestock) is a tool best-suited to deter wolf-livestock conflict in a chronic conflict area according to the professional judgment of WDFW staff, it will be included in the conflict mitigation plan with the expectation that documentation of range riding efforts as specified in the conflict mitigation plan will be provided to WDFW on a regular basis."

**Reasons supporting proposal:**

**1. Proposed changes to WAC 220-440-080:** WDFW has a clear record of promoting, prioritizing, and funding non-lethal wolf-livestock conflict deterrence measures (more than 80% of the budget for wolf-livestock conflict is spent on non-lethal approaches). Proposed changes to WAC 220-440-080 would align the code with the agency's commitment to non-lethal conflict mitigation strategies.

**2. Proposal to create WAC 220-440-260:** WDFW's recovery efforts for wolves are guided principally by the 2011 Wolf Conservation and Management Plan (Wolf Plan) and the 2017 Wolf-Livestock Interaction Protocol (Protocol), non-binding guidance to address the use of non-lethal conflict deterrents and wolf lethal removals. These management guidelines have resulted in some of the lowest levels of documented livestock depredation and subsequent wolf removals in the nation. Although the implementation of the Wolf Plan and Protocol have resulted in successful wolf-livestock conflict mitigation in most occupied wolf territory, no document or rule can or does account for every scenario in which WDFW must exercise discretion.

The proposal creating WAC 220-440-260 aims to address the challenge of areas that have experienced recurrent and significant levels of livestock depredation and subsequent wolf removals. The Wolf Plan and Protocol do not provide guidance in a situation where chronic depredations and lethal removals have occurred in the same wolf pack territory for multiple consecutive years.

Although wolf-livestock conflict scenarios are notoriously difficult to predict, multiple studies show that depredation risk may increase after a wolf pack has learned to prey on livestock and there is a predictable pattern of recurrence of depredations in areas with prior conflicts. This proposal, if adopted, would focus limited WDFW staff time, livestock producer time, and resources to areas where the most livestock and wolf loss has occurred in the state, with the goal of instituting practices that will avoid the repeated loss of wolves and livestock in Washington.

**3. Optional additional language for inclusion in section 2 of proposed WAC 220-440-260 addressing range riding:** As noted above, the proposed WAC changes do not include “range riding”-specific provisions. The rationale for not including “range riding” provisions in the proposed WAC changes attached to this CR-102 notice is primarily based on the fact that range riding is a livestock husbandry and monitoring tool (e.g., keeping track of livestock, grouping livestock, removing sick and/or injured livestock from the range, securing attractants), and it is not wolf (or other predator) focused. WDFW’s enabling statutes (Title 77 RCW) authorize broad discretion to manage *wildlife*. Because the statutes do not authorize WDFW to mandate, regulate, or enforce the management of livestock operations or animal husbandry practices, WDFW is not in the position to mandate or enforce range riding as a tool in rule. In addition, assessment of when and how range riding may be effective in monitoring a livestock herd is highly fact-specific and is not conducive to uniform definition in rule (i.e., quality range riding activities differ based on multiple and varying factors). Therefore, agency staff drafting the proposed rule do not recommend adoption of the optional additional “range riding” language at this time.

The additional “range riding” language in the preceding section is provided because of interest in range riding from some members of the public and at least one Commissioner. In providing this potential additional provision, WDFW does not intend to presume that range riding would be included in every conflict mitigation plan, regardless of whether the additional language is adopted by the commission. Range riding is the most expensive measure analyzed in the Small Business Economic Impact Statement (SBEIS), ranging from an estimated \$19,000 to \$55,000 per year. This constitutes a significant fraction of average industry revenues for businesses that bear these costs, likely an untenable cost for the smallest businesses. A broadly applicable range riding provision has the potential of increasing costs on small business (potentially untenable costs) and agency staff’s preferred approach (addressing range riding only where appropriate via a conflict mitigation plan) is identified in the SBEIS as a cost mitigation option.

WDFW solicits comments on the proposed rule changes attached to this CR-102 notice, as well as the potential addition of a “range riding” specific provision to the proposed rule text. WDFW invites comments on whether the addition of the “range riding” provision drafted above provides useful clarity, or is otherwise proper or improper, and on whether other formulations would be preferable.

**Statutory authority for adoption:** RCWs 77.04.012, 77.04.013, 77.04.020, 77.04.055, 77.12.047, 77.12.240, 77.36.030, 77.36.100, 77.36.110, and 77.36.130.

**Statute being implemented:** RCWs 77.04.012, 77.04.013, 77.04.020, 77.04.055, 77.12.047, 77.12.240, 77.36.030, 77.36.100, 77.36.110, and 77.36.130.

**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:** None.

**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: This proposal does not require a cost benefit analysis under RCW 34.05.328(5)(i)

**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 \_\_\_\_.

Explanation of exemptions, if necessary:

**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:

**Need for the Rule:**

Following decades of extirpation, gray wolves began naturally recolonizing the State of Washington from populations in surrounding states and provinces, with the first pack with pups documented in July 2008. Gray wolves were federally listed under the Endangered Species Act (ESA) throughout their range beginning in 1978 but were delisted in the eastern third of Washington in 2011. In 2021, the U.S. Fish and Wildlife Service delisted gray wolves from federal protection across all of Washington. With the federal delisting, WDFW is solely responsible for the management and recovery of gray wolves

throughout Washington State outside of tribal lands and National Parks. The gray wolf was listed as a state endangered species in 1980 and retains that status.

Conflict between wolves and livestock occurs everywhere the two coexist but generally is not frequent and is not uniform across the landscape. When conflict between wolves and livestock does occur and becomes chronic, it can result in significant costs. In executing its management responsibility for the gray wolf population, WDFW focuses on the proactive use of non-lethal deterrents to minimize wolf-livestock conflict. Starting in 2018, WDFW and the Wolf Advisory Group (WAG)—a citizen stakeholder group with participants ranging from livestock producers, wolf conservation groups, land managers, and hunting advocates among others—began discussing areas where conflict between wolves and livestock appeared to be focused and recurring annually. In 2020, following continued discussion between WDFW, the WAG, the Washington State Fish and Wildlife Commission, and petitions by environmental organizations, Governor Jay Inslee directed WDFW to develop regulations regarding wolf management with the goal of instituting practices that will avoid the repeated loss of wolves and livestock.

The objectives of WDFW’s proposed rule are to:

1. Establish a procedure for identifying WDFW’s expectations for use of non-lethal tools to mitigate wolf-livestock conflict in areas of chronic conflict, while recognizing the use of non-lethal tools is encouraged statewide; and,
2. Establish criteria for the use of WDFW’s lethal removal authority in areas of chronic wolf-livestock conflict

**Potentially Affected Small Business.**

The rule has the potential to affect the behavior of businesses that have, or may in the future, experience wolf depredation. Thus, the businesses potentially affected by this rule are producers of livestock. There are currently 1,095 individual operations in the State of Washington within the following sectors: beef cattle ranching and farming, cattle feedlots, dairy cattle and milk production, sheep farming, and goat farming (Exhibit 2-1). Available data suggest that 98 percent of them employ fewer than 50 individuals and are thus considered small (Exhibit 2-1). This finding is corroborated by information provided by industry representatives interviewed for this analysis, as well as employment data for a subset of these businesses available from ESD.

“Minor cost” is defined in RCW 19.85.020 as, “a cost per business that is less than 0.3 percent of annual revenue or income or one hundred dollars, whichever is greater, or one percent of annual payroll.” As payroll data are not available, the analysis calculates minor cost thresholds based on revenues of business entities in the affected industries. At a statewide level, the minor cost thresholds for the potentially affected business types range from \$222 (goat farming) to \$1,356 (dairy farms) (in 2020 dollars). The complete list of minor cost thresholds for all relevant business types are identified in Exhibit 2-1. Exhibit 2-2 describes the businesses and minor cost thresholds at a finer resolution for the businesses more likely to be affected by the rule.

TYPE OF BUSINESS (NAICS CODE) <sup>1</sup>	# OF BUSINESSES IN WASHINGTON	PERCENTAGE OF BUSINESSES CONSIDERED SMALL <sup>2</sup>	AVERAGE ANNUAL REVENUES (2020\$)	MINOR COST THRESHOLD = 0.3% AVERAGE ANNUAL REVENUES (2020\$)
Cattle ranching (112111)	276	99%	\$140,000	\$430
Cattle feedlots (112112)	111	98%	\$300,000	\$890
Dairy cattle and milk (112120)	509	97%	\$450,000	\$1,400
Sheep farming (112410)	31	100%	\$110,000	\$340
Goat farming (112420)	18	100%	\$74,000	\$220
Other/Multiple	150	99%	\$430,000	\$1,300
<b>TOTAL<sup>3</sup></b>	<b>1,095</b>	<b>98%</b>	<b>\$340,000</b>	<b>\$1,020</b>
<b>Notes:</b>				

1. Type of business as identified by primary North American Industry Classification System (NAICS) code. Businesses identified as “Other/Multiple” includes those for which the primary NAICS code was something other than a relevant livestock production code, but that identified a relevant NAICS code as a secondary business type.
2. Percent of businesses with <50 employees.
3. Totals may not sum due to rounding.

**Source:** D&B Hoovers (n.d.). List of livestock production businesses in Washington State. Retrieved January 13, 2022, from <https://libguides.library.ohio.edu/business/databases/d-b-hoovers>.

The businesses most likely to be potentially affected by the rule are those that are in wolf pack territories, where depredation events have the greatest potential to occur. Exhibit 1-2 identifies the counties that a) include the area that will initially be designated as a Chronic Conflict Area (dark blue), b) are outside of the Chronic Conflict Area but contain a known wolf pack territory and have experienced depredation events (teal), c) contain a known wolf pack territory and have not experienced depredation (green), and d) do not contain a known wolf pack territory (yellow). Of the businesses identified in Exhibit 2-1, many are unlikely to be affected by or incur costs triggered by the rule because there are no wolves present in their areas of operation. To the extent that the territories of the wolf packs expand into these areas at some point in the future, they may also bear the types of costs described in this analysis. However, the likelihood and timing of such an event is uncertain. This analysis focuses on the livestock producers in the counties overlapping the current known wolf pack territories in Washington State. This analysis finds that producers operating within known wolf pack territories are the most likely to incur costs as a result of the rule. Exhibit 2-2 characterizes these businesses based on their geographic locations in three categories:

- Within counties that overlap the current Chronic Conflict Area;
- Within a county that overlaps with a known wolf pack territory and has experienced depredation, but not in a Chronic Conflict Area; and
- Within a county that overlaps a known wolf pack territory but does not have documented wolf depredation.

As wolf presence and livestock depredation risk are not uniformly distributed across the landscape in the relevant counties, not all the producers identified in Exhibit 2-2 necessarily operate within a known wolf pack territory. The businesses not overlapping with a known wolf pack territory are less likely to experience costs as a result of the rule.

**What are their minor cost thresholds?**

- **EXHIBIT 2-2. NUMBERS OF BUSINESSES, ANNUAL REVENUES, AND MINOR COST THRESHOLD FOR POTENTIALLY AFFECTED BUSINESSES**

TYPE OF BUSINESS <sup>1</sup>	# OF BUSINESSES IN GROUP	PERCENTAGE OF BUSINESSES CONSIDERED SMALL <sup>2</sup>	AVERAGE ANNUAL REVENUES (2020\$)	MINOR COST THRESHOLD = 0.3% AVERAGE ANNUAL REVENUES (2020\$)
<b>Counties Containing Chronic Conflict Area (Stevens and Ferry Counties)<sup>3</sup></b>				
Cattle ranching	20	100%	\$91,000	\$270
Cattle feedlots	11	100%	\$103,000	\$310
Dairy cattle and milk	8	100%	\$180,000	\$530
Sheep farming	0	-	-	-
Goat farming	0	-	-	-
Other (multiple)	5	100%	\$130,000	\$380
<b>Counties Containing Known Wolf Pack Territories, Depredation Occurring</b>				
Cattle ranching	61	98%	\$140,000	\$410

Cattle feedlots	14	100%	\$270,000	\$800
Dairy cattle and milk	2	100%	\$130,000	\$390
Sheep farming	2	100%	\$95,000	\$280
Goat farming	1	100%	\$62,000	\$190
Other (multiple)	35	100%	\$230,000	\$700
<b>Counties Containing Known Wolf Pack Territories, Depredation Not Yet Occurring</b>				
Cattle ranching	27	100%	\$110,000	\$340
Cattle feedlots	8	100%	\$82,000	\$250
Dairy cattle and milk	202	98%	\$330,000	\$990
Sheep farming	3	100%	\$58,000	\$170
Goat farming	3	100%	\$69,000	\$210
Other (multiple)	2	100%	\$140,000	\$420
<b>Notes:</b>				
<ol style="list-style-type: none"> <li>1. Type of business as identified by primary North American Industry Classification System (NAICS) code. Businesses identified as "Other/Multiple" includes those for which the primary NAICS code was something other than a relevant livestock production code, but that identified a relevant NAICS code as a secondary business type.</li> <li>2. Percent of businesses with &lt;50 employees.</li> <li>3. The number of businesses identified include all businesses within Stevens and Ferry Counties. Data are not available to isolate the specific businesses that are within the territory of the Togo wolf pack that would be designated as a Chronic Conflict Area under the proposed rule.</li> </ol>				
<p><b>Source:</b> D&amp;B Hoovers (n.d.). List of livestock production businesses in Washington State. Retrieved January 13, 2022, from <a href="https://libguides.library.ohio.edu/business/databases/d-b-hoovers">https://libguides.library.ohio.edu/business/databases/d-b-hoovers</a>.</p>				

The livestock production industry operating in the counties currently being affected by wolf depredation is dominated by cattle ranches and cattle feedlots. Although there are very few dairy operations in these counties, dairy is the most predominant business type in the other counties within known wolf pack territories (i.e., those not experiencing depredation). The average annual revenues across all relevant industries and counties presented in Exhibit 2-2 range from \$58,000 to \$330,000 per year. The highest average revenues are associated with dairy operations; sheep and goat farming are lower revenue businesses on average. Cattle ranching operations, which most frequently experience wolf depredation, have average annual revenues ranging from approximately \$91,000 to \$140,000. The annual revenues for individual cattle ranching operations ranges from \$30,000 to \$1.1 million.

**Potential for businesses to incur costs as a result of the rule.**

The likelihood that the rule would trigger livestock producers to implement non-lethal deterrents, above and beyond what they would implement under the baseline (i.e., status quo absent implementation of the rule), is uncertain for the reasons previously described:

1. The livestock producers have a vested interest in protecting their livestock from wolves absent any WDFW rule or regulation and may therefore implement these types of deterrents regardless of the rulemaking.
2. WDFW works with the industry to recommend, and offer cost-sharing support for, implementation of non-lethal deterrents even absent the rulemaking.
3. It is currently WDFW practice to evaluate whether a producer has already implemented at least two types of non-lethal deterrents before lethal removal will be considered. Even absent the proposed rule, WDFW would continue to work with industry to ensure appropriate use of non-lethal deterrents before considering lethal removal of wolves.

Given this, it is likely that most businesses at relatively high risk of wolf-livestock conflicts would implement non-lethal deterrents absent the rule. For example, most industry representatives interviewed in areas where wolf depredation has occurred identified that they were already implementing some non-lethal deterrent measures, with those who have experienced depredation indicating implementation of all practical and applicable deterrents. For businesses at relatively low risk of wolf-livestock conflicts, it is most likely they would not implement non-lethal deterrents regardless of this rulemaking.

That the rule is unlikely to affect the behaviors of most businesses is not in conflict with the purpose of the rule. The objective of the proposed rule is not to direct industry to change the types of non-lethal deterrents that businesses implement and when, but rather to codify WDFW's practices and establish a process through which WDFW will provide area-specific advice to livestock producers at high risk of depredations in Chronic Conflict Areas and make decisions regarding lethal removal of wolves in these areas moving forward. The benefit of having a defined, standard decision-making process written into regulation is that it requires WDFW to be systematic in developing a roadmap for minimizing wolf-livestock conflicts in Chronic Conflict Areas and reduces any uncertainty for industry regarding WDFW's approach to lethal removal decisions.

This analysis does find, however, that in some cases, the rule may provide actionable information to industry regarding WDFW's process that would trigger changes in behavior regarding use of non-lethal deterrents. Under these circumstances, the associated costs could be considered a result of proposed rule. Specifically, WDFW's development of Conflict Mitigation Plans, and the clarification of the process through which lethal removal of wolves will be considered, may encourage some livestock producers to be more proactive in implementing non-lethal deterrents.

For example, businesses may reference the Conflict Mitigation Plans that WDFW develops (regardless of whether they are in a Chronic Conflict Area) and implement any potentially relevant non-lethal deterrents in order to ensure the option of lethal removal of wolves in the event of future depredation. This scenario is most likely for businesses that anticipate they are at some risk of experiencing wolf-livestock conflicts. Accordingly, businesses closest to recent conflicts or within current known wolf pack territories, or businesses whose livestock management practices otherwise make them more vulnerable to conflicts, may be most likely to be more proactive in implementing non-lethal deterrents as a result of the rule.

#### **Potential cost per business.**

As previously noted, most businesses are unlikely to experience additional costs as a result of the rule. In the case that the rule motivates an increase in the use of non-lethal deterrents, however, this section provides information on the potential range in the associated costs. As described in Exhibit 2-3, there is a wide range in the costs of individual non-lethal deterrents and the relevant non-lethal deterrents vary by business. Following are the key factors influencing the potential costs to livestock operations that elect to implement non-lethal deterrents due to the WDFW rule:

**Specific non-lethal deterrents relevant to the livestock operation:** The types of non-lethal deterrents that are likely to be most effective vary geographically and by type of livestock operation. WDFW expects that the Conflict Mitigation Plans will reflect site-specific factors.

**Size and nature of the livestock operation:** The costs of certain deterrents are a function of the size of the operation or the geographic extent of the rangeland area (e.g., range riding and fencing).

**Extent of baseline use of non-lethal deterrents absent the rule:** As previously noted, it may be that the businesses are already implementing some types of deterrents regardless of the rule.

**Fraction of total costs that would be borne by the business:** It is important to note that many of the businesses that are affected by wolf depredation, particularly those that are implementing extensive non-lethal deterrence techniques, rely to some extent on available financial support. This support ranges from sharing of costs of deterrents with WDFW through the DPCA\_L program and provision of tools such as fox lights and fladry by WDFW at no cost to producers, and the use of state-funded range riders through WDFW, CPoW, and NEWWCC. These resources are limited, subject to availability, and not guaranteed to be available in the long term. To the extent that financial support becomes more limited, a greater portion of current and future costs of non-lethal deterrents may be borne by the individual producers. Additionally, implementation of non-lethal deterrents may increase as a result of the rule, or as a result of wolf populations expanding to new areas of the state. This may result in available resources being dispersed more widely across a greater number of producers, reducing the existing levels of support individual producers are currently receiving. Industry representatives identified that availability of state-funded range riders is already highly limited, as are state-provided tools such as fox lights and fladry (with most of these resources currently going to producers in the northeastern part of the state). Increased demand for these resources may also increase the proportion of deterrent costs that are paid out-of-pocket by producers.

Despite these uncertainties, based on the information provided in Exhibit 2-3, earnest attempts to implement non-lethal deterrents are likely to cost on the order of thousands to tens of thousands of dollars per year per business. Furthermore, WDFW indicates that human presence (including range riding) will continue to be a key focus of wolf-livestock conflict management under the rule and this measure is the most expensive, ranging from an estimated \$19,000 to \$55,000 per year. This constitutes a significant fraction of average industry revenues for businesses that bear these costs and is likely an untenable cost for the smallest businesses.

#### **Did the agency make an effort to reduce the impact to the rule?**

RCW 19.85.030 requires that, when a rule is expected to disproportionately impact small businesses, the agency consider several methods for reducing the impact of the rule on small businesses. These methods may include decisions that were made in determining the provisions of the rule itself, or opportunities to reduce the costs of implementing the rule as written.

WDFW considered a number of regulatory options in developing the proposed rule, including an alternative that would include a prescriptive and exhaustive set of non-lethal deterrent use requirements that would be broadly required. In considering this alternative, WDFW determined that broad requirements for non-lethal deterrent techniques that may or may not be feasible or effective for an individual business or specific area would result in excessive costs to businesses. The proposed rule instead stipulates that identification of non-lethal deterrents within a Conflict Mitigation Plan will be established with consideration to the particular conditions on the ground, limiting rule costs to only those non-lethal deterrents that are appropriate for the specific situation and affected businesses.

WDFW also considered a rule provision that would identify that all livestock producers who experienced wolf-livestock conflict on public land would need to implement range riding for WDFW to consider lethal removal of a wolf. WDFW has not included this measure in the proposed rule, however, instead proposing to evaluate the expectation for range riding on a case-by-case basis in developing Conflict Mitigation Plans. This more tailored approach may reduce the cost for businesses resulting from rule implementation.

The primary pathway through which WDFW intends to mitigate for costs resulting from the proposed rule is through continuation of the programs in place to provide financial and other support to livestock producers experiencing depredation. These programs include:

- WDFW's Damage Prevention Cooperative Agreement for Livestock (DCPA\_L) program, which provides cost-sharing opportunities to affected producers for implementation of proactive depredation mitigation measures.
- Provision of WDFW-contracted range riders to implement deterrence activities at no cost to livestock producers.

In considering potential methods for cost mitigation, the agency must evaluate opportunities to simplify, reduce, or eliminate recordkeeping and reporting requirements. The rule itself does not directly impose any reporting or recordkeeping requirements on the industry. However, producers that are subject to a Conflict Mitigation Plan will need to provide documentation of non-lethal deterrent use to demonstrate to WDFW they are implementing the terms of the plan for a lethal removal to be considered by WDFW. WDFW anticipates that the required documentation will be similar to that which is currently required under DPCA\_L contracts or to submit for compensation of losses. In developing those requirements, WDFW considered the administrative burden placed on producers and the minimum amount and type of information that was necessary to adequately describe implementation of non-lethal deterrents.

The regulating agency must consider delaying compliance timetables as a potential cost mitigation option. The Wolf-Livestock Conflict Deterrence rule making proposal will be provided to the WDFW Commission for action on May 13, 2022. If adopted, the rule or rules are tentatively scheduled to be implemented in January 2023 to allow the industry sufficient time to plan for any new costs that may be incurred as a result of the rule.

In addition, WDFW considered a range of suggestions from industry representatives as to how the costs of the rule could be reduced, including the following:

1. Have 100 percent of the costs for non-lethal deterrents be paid for by WDFW.
2. Increase lethal removals or implement relocations of wolves to reduce the populations (reducing the need for non-lethal deterrents).

WDFW considered these and other cost reduction options presented by the industry. However, WDFW has not included these cost reduction measures within the rule for several reasons, including that they didn't meet the intended goals of the rule (e.g., increasing lethal removals), or were outside of the bounds of the rule.

Other types of cost mitigation strategies that must be considered are not relevant to this rulemaking:

- **Reducing the frequency of inspections:** WDFW does not carry out or have the authority to carry out inspections of livestock operations.
- **Reducing or modifying fine schedules for non-compliance:** This rule does not prescribe specific compliance requirements for industry; thus, there are not fines associated with non-compliance.

#### **Did the agency involve small businesses in the rule development process?**

WDFW and the affected livestock industry have worked closely together to address the challenges of wolf-livestock conflict since wolves began populating the state. This section describes the historical stakeholder involvement in this process, their involvement specifically in this rulemaking process, and how small businesses were involved in the development of the SBEIS.

#### **Will business have to hire or fire employees because of the requirements in the rule?**

Through establishment of Chronic Conflict Areas and Conflict Mitigation Plans, the rule has the potential to increase the number of businesses that will utilize range riding as a non-lethal deterrent or increase the frequency of range riding. Industry representatives indicated that it is difficult to implement frequent or extensive range riding by business owners or existing employees because of the time taken away from other required activities. Interviewees further identified that the rule was

likely to result in the need for additional range riders either paid for by the businesses themselves, or provided by CPoW, NEWWCC, or WDFW. As a result, the rule may increase the number of range riding jobs in the industry. Conversely, for certain businesses, it is possible that the costs of non-lethal deterrents interpreted as required by the rule cannot be absorbed by current revenue streams. In some instances, this could result in business closures and job loss. However, whether this would occur, and the number of businesses or jobs affected, is uncertain.

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

Name: Annie Szvetecz, Agency Rules Coordinator

Address: P.O. Box 43200 • Olympia, WA 98504-3200

Phone: 360 480-6536

Fax:

TTY:

Email: [Rule.Coordinator@dfw.wa.gov](mailto:Rule.Coordinator@dfw.wa.gov)

Other: Website: <https://wdfw.wa.gov/about/regulations/development/wolf-livestock-conflict-deterrence>

**Date:** February 16, 2022

**Name:** Annie Szvetecz

**Title:** Agency Rule Coordinator

**Signature:**



**WAC 220-440-080 Killing wolves attacking domestic animals.** The commission is authorized, pursuant to RCW 77.36.030, to establish the limitations and conditions on killing or trapping wildlife that is causing damage on private property. The department may authorize, pursuant to RCW 77.12.240 the killing of wildlife destroying or injuring property. Killing wildlife to address private property damage is subject to all other state and federal laws including, but not limited to, Titles 77 RCW and 220 WAC.

(1) An owner of domestic animals, the owner's immediate family member, the agent of an owner, or the owner's documented employee may kill one gray wolf (*Canis lupus*) without a permit issued by the director, regardless of its state classification, if the wolf is attacking their domestic animals.

(a) This section applies to the area of the state where the gray wolf is not listed as endangered or threatened under the federal Endangered Species Act.

(b) Any wolf killed under this authority must be reported to the department within (~~twenty-four~~) 24 hours.

(c) The wolf carcass must be surrendered to the department.

(d) The owner of the domestic animal must grant or assist the department in gaining access to the property where the wolf was killed for the purposes of data collection or incident investigation.

(2) If the department finds that a private citizen killed a gray wolf that was not attacking a domestic animal, or that the killing was not consistent with this rule, then that person may be prosecuted for unlawful taking of endangered wildlife under RCW 77.15.120.

(3) In addition to the provisions of subsection (1) of this section, the director (or WDFW staff designee) may authorize agency lethal removal of wolves or additional removals by permit under the authority of RCW 77.12.240 if the director (or WDFW staff designee) determines an owner has proactively implemented appropriate nonlethal conflict deterrence measures.

NEW SECTION

**WAC 220-440-260 Wolf-livestock conflict deterrence in chronic conflict areas.** (1) **Definitions:**

(a) "Affected livestock producers" means the livestock producers in a conflict mitigation plan drafted by Washington department of fish and wildlife (WDFW) pursuant to subsection (2) of this section. This includes, but is not limited to, livestock producers who experienced wolf depredation in the chronic conflict area.

(b) "Livestock producer" means any person who owns livestock for home use or for profit, especially on a ranch or farm.

(c) "Wolf depredation" means an incident or event that results in the injury or death of livestock on federal, state, tribal, or other public lands, or private lands by one or more wolves.

(d) "Wolf pack" means a group of two or more wolves traveling together in winter.

(e) "Wolf pack territory" means an area occupied by a pack of wolves, including den and rendezvous sites if the pack is reproductive.

**(2) Conflict mitigation plan.**

The director (or WDFW staff designee) may designate a geographic area (e.g., all or a portion of a wolf pack territory) as a chronic conflict area when wolf depredations of livestock have occurred and lethal removal of wolves was authorized in two of the last three years.

For each designated chronic conflict area, WDFW staff will author a conflict mitigation plan. To the extent feasible, WDFW will develop the conflict mitigation plan in consultation with willing, affected livestock producers, as well as federal, state, and tribal agencies that manage lands and/or wildlife in the designated chronic conflict area. The plan will specify nonlethal deterrence measures that are appropriate for the chronic conflict area according to the professional judgment of WDFW staff, considering, but not limited to:

(a) Species and type of livestock;

(b) Characteristics of the livestock operation (e.g., size of pastures, type of fencing, open range grazing, presence of calving pens);

(c) Herd composition, calving/lambing periods, and/or seasonality of livestock production for each affected livestock producer in a chronic conflict area;

(d) The season of use when livestock are permitted to be on a leased grazing area (if applicable);

(e) Location(s) where livestock will be grazed and measures to avoid livestock trespass;

(f) Measures to avoid unnatural attractants for wolves; and

(g) Landscape characteristics.

Once a mitigation plan is in place, the plan may be revised or terminated by WDFW if on-the-ground conditions or state of knowledge changes.

**(3) Criteria for lethal removal of wolves.**

(a) The director (or WDFW staff designee) may authorize lethal removal of wolves in a chronic conflict area as a tool to address repeated depredations by wolves on livestock on a case-by-case basis if, in the judgment of the director (or WDFW staff designee):

(i) Depredations are likely to continue;

(A) Intentional feeding/baiting of wolves was not a known factor in the repeated depredations;

(B) Empirical and predictive data suggests that lethal removal of wolves is not expected to harm the wolf population's ability to reach recovery objectives statewide or within individual wolf recovery regions; and

(C) One of the following circumstances are present:

(I) The material conditions and expectations set forth in any applicable conflict mitigation plans have been substantially complied with; or

(II) Wolves have attacked, injured, or killed livestock of more than one livestock producer where one of the livestock producers with depredated livestock implemented nonlethal deterrence measures as deemed appropriate by WDFW staff, even if a neighboring livestock producer did not fully implement nonlethal deterrence measures set forth in an applicable conflict mitigation plan.

(b) The lethal removal authorization will have an expiration date specified at the time of issue. Once issued, the authorization may be

revised or terminated by WDFW if on-the-ground conditions or state of knowledge changes.