

Sent Via Email to: rules.coordinator@dfw.wa.gov

September 15, 2023

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Washington Fish & Wildlife Commission
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Cc: Director Kelly Susewind
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Re: Petition to amend the Washington Administrative Code to bring clarity, accountability, and transparency to Washington's wolf management decisions

Dear Commissioners and WDFW Rules Coordinator:

In accordance with RCW [34.05.330](#), please accept this petition asking the Washington Fish & Wildlife Commission to undertake rulemaking to put into place enforceable standards to regulate the state's management of endangered gray wolves. The petitioners hope the Commissioners will take the time to give this petition due consideration, and respectfully request that they schedule a meeting at which we can be heard in support of this petition.

I. Introduction

The Washington Department of Fish and Wildlife has struggled to properly manage and work to avoid conflict between livestock and wolves since wolves returned to the state. Instead, the Department has chosen again and again to use taxpayer money to shoot state endangered wolves to benefit the livestock industry. In June 2020, the Commission voted to reject a rulemaking petition advanced by environmental groups seeking a rule to provide accountability, transparency, and clarity as to when the Washington Department of Fish and Wildlife ("Department") could kill wolves, leaving the public, the livestock industry, and the Department once again in a state of uncertainty.

In September 2020, Governor Jay Inslee granted an appeal brought by conservation groups and ordered the Department to engage in rulemaking. When the Department finally complied with the Governor’s order and proposed draft rule changes two years later, it indicated it did not believe these rules were necessary, because Washington’s wolf management practices were a success. Yet the Department continues to kill state endangered wolves as the result of conflicts with livestock, despite best available science showing that proactive, non-lethal deterrence measures are the most effective means to prevent such conflicts. The Department continues to kill wolves even when livestock producers fail to take basic steps to protect their cattle, such as moving them away from core wolf areas. Despite public opposition, the Department continues to kill wolves on public lands or due to conflicts with livestock on public lands, with 75% of the wolves it has killed or authorized to be killed being targeted, at least in part, due to predations on public lands. And the Department continues to target wolves in the same areas for the same producers, year after year.

Meanwhile, livestock owners have made increasing use of a loophole in the current law to kill wolves by claiming the wolves were “caught in the act” of attacking livestock—even where there is no evidence to support these assertions and the livestock owners have not taken any steps to protect their livestock. Since the Department continues to perpetuate the myth that killing wolves is the ultimate solution to livestock conflicts, the increase in the number of these “caught in the act” killings and the startling rise in wolf poaching should come as no surprise.¹

The undersigned Petitioners are asking the Commission to once more consider rules that would make Washington a leader in science-based wolf management. We ask the Commission to approve rules that focus on using effective non-lethal measures to prevent livestock-wolf conflict, promote social tolerance for coexisting with wolves, prevent the use of legal loopholes to kill wolves, and institute a consistent, transparent, and science-based process to guide the Department in authorizing any lethal control actions.

II. Background

On May 11, 2020, several conservation organizations filed a petition for rulemaking requesting codified language that dictated when the Department could use taxpayer funds to kill gray wolves for conflicts with livestock (“2020 Petition”).² This petition for rulemaking followed two others filed in 2013 and 2014.

¹ See Chapron, G. and Treves, A. 2016. Blood does not buy goodwill: allowing culling increases poaching of a large carnivore. *Proc. R. Soc. B* 283: 20152939.<http://dx.doi.org/10.1098/rspb.2015.2939>; Laaksonen, M. and Sanchez-Molina, F. 2018. Keeping the wolf from the door. Analysis of derogation-based wolf hunting permits in Finland. Report published by Luonto-Liiton susiryhma / The Wolf Action Group; and Oliynyk, R.T., 2023. Human-caused wolf mortality persists for years after discontinuation of hunting. *Scientific Reports*, 13(1), p.11084. All studies are included in the [resource packet](#).

² [Exhibit A](#), Petition to amend the Washington Administrative Code to require nonlethal techniques to reduce livestock conflict (sent May 11, 2020). Because the 2020 Petition contained extensive background on wolves in Washington and the state’s wolf management practices, we will not repeat all that background here.

On June 26, 2020, the Commission denied the 2020 Petition. Petitioners appealed the Commission's decision to Governor Jay Inslee on July 23, 2020,³ and on September 4, 2020, the Governor granted the appeal, requesting in a letter that "the agency initiate a new rulemaking relating to wolf management" and establish these rules prior to the 2021 grazing season.⁴ The Governor indicated that "the potential for future depredations and lethal control actions, under our existing framework, remains unacceptably high," and concluded that "[w]e must move more quickly and decisively to institute practices that will avoid the repeated loss of wolves and livestock in our state." His letter asked the Department to institute rulemaking that would focus on the following areas:

- Standardizing definitions and requirements for the use of range riding;
- Instituting requirements for the use of non-lethal deterrents most appropriate for specified situations;
- Mandating the use of action plans in areas of chronic predations; and
- Putting in place compliance measures for livestock operators who do not implement required non-lethal measures.⁵

The Department, however, failed to propose the rules requested by the Governor in either 2020 or 2021. It was not until February 16, 2022, that the Department circulated draft rules pursuant to the Governor's request ("2022 Draft Rules"), and these proposed rules fell far short of implementing needed changes.⁶ Rather than revising and improving the 2022 Draft Rules, on July 8, 2022, the Commission voted to take "no action" on the rulemaking proposal.⁷

As a result of the Commission's failure to adopt new wolf management rules, the Department's determinations on when to kill wolves in Washington continue to be loosely guided by an advisory-only, unenforceable Wolf Livestock Interaction Protocol ("Protocol").⁸ This Protocol was developed in 2016 and 2017 by a Department-appointed stakeholder group known as the Wolf Advisory Group ("WAG").⁹ The Department frequently deviates from this Protocol because it is only "guidance" and not a binding rule, creating a chaotic environment of uncertainty. And even when the

³ Appeal of the Washington Fish and Wildlife Commission's Denial of Rulemaking to Amend WAC 220-440-040 and 220-440-080 to Require Use of Nonlethal Techniques to Reduce Livestock-Wolf Conflict (Jul. 23, 2020). Included in [resource packet](#).

⁴ Letter from Jay Inslee, Governor, Washington State, to Larry Carpenter, Chair, Washington Fish and Wildlife Committee (Sept. 4, 2020), available at: <https://governor.wa.gov/sites/default/files/2023-01/Letter%20to%20DFW%20-%20Wolf%20Mgmt%20Appeal%20%28final-signed%29.pdf>. (last viewed July 18, 2023).

⁵ *Id.*

⁶ CR-102 filed as WSR 22-05-092 (Feb. 16, 2022), available at: <https://wdfw.wa.gov/sites/default/files/about/regulations/filings/2022/WSR%2022-05-092.pdf> (last viewed July 18, 2023).

⁷ Withdrawal notice filed as WSR 22-15-063 (Jul. 18, 2022), available at: <https://wdfw.wa.gov/sites/default/files/about/regulations/filings/2022/WSR%2022-15-063.pdf> (last viewed July 18, 2023).

⁸ Wolf Advisory Group, Wolf-Livestock Interaction Protocol, Washington Department of Fish and Wildlife (June 1, 2017, as revised Sept. 15, 2020), available at: https://wdfw.wa.gov/sites/default/files/2020-09/20200915_wdfw_wolf_livestock_interaction_protocol.pdf (last viewed July 18, 2023).

⁹ The 2020 Petition discusses both the Protocol and the WAG at length. See [Exhibit A](#).

Department follows the Protocol, its provisions are ineffective at protecting either wolves or livestock, do not provided adequate transparency or accountability and continue to perpetuate the myth that the best solution to livestock-wolf conflicts is to kill wolves.

The 2020 Petition provides a complete background on wolf recovery in Washington, the science regarding the ecological importance of wolves on the landscape, a history on the management of wolves in the state, and information on the importance and effectiveness of non-lethal management. Rather than repeat all that information here, Petitioners incorporate the 2020 Petition by reference, and encourage the Commission to review the information provided there.

Rather than recycle the language from the 2020 Petition, Petitioners are proposing new rule language that modifies the 2022 Draft Rules to propose effective, science-based, and transparent regulations for the Department's management of livestock-wolf conflicts.

III. Wolf Management Since the 2020 Petition

Since the 2020 Petition, the Department has continued to kill wolves on public lands as a result of avoidable conflicts with livestock, while the state has also seen a dramatic rise in illegal wolf killings. These incidents further illustrate the need for new rules to regulate how the Department handles livestock-wolf conflict.

Shortly after petitioners filed the 2020 Petition, Director Kelly Susewind issued a kill order for the Wedge pack. Acting pursuant to that order, the Department killed three more wolves in that pack, destroying it for the second time. The Department killed these wolves at the behest of the same family livestock operation for which it has now killed 75% of the 44 state endangered wolves it has killed or authorized to be killed to date.¹⁰

Between the Governor's September 4, 2020, directive to the Department and Commission's July 2022 vote not to adopt a wolf management rule, the Department killed several more wolves under Susewind's direction:

- The Department killed one wolf and issued a permit to the producer to kill another in Columbia County in November 2021. These wolves were killed even though range riders were only patrolling the area once or twice a week and the producer had consistently refused to cooperate with the Department, including refusing to provide information about how many cattle remained in the conflict area, which was also a wolf rendezvous point.¹¹ The kill order was issued despite the fact that more than 20 days had elapsed between the last predation and the kill order, during which time one Columbia County wolf had been struck

¹⁰ *Wolves Killed By WDFW*, Washington Wildlife First, updated September 14, 2023 ([Exhibit B](#)).

¹¹ *Livestock Wolf Mitigation Measures*, Washington Department of Fish and Wildlife, Olympia, Washington (final entry Nov. 1, 2021). At page 3, 6. Obtained through PDR and included in [resource packet](#).

and killed by a car.¹² In fact, before it issued the kill order, the Department acknowledged that “[c]urrent research suggests removing wolves at this point would not reduce the likelihood of a future depredation.”¹³

- In June 2022, the Department killed two members of the Togo pack in an area it had identified as a possible wolf den site.¹⁴ The Department had previously killed another member of the Togo pack in 2018, and since then has issued a new kill order against the pack every year—although it was unable to kill Togo wolves in 2019,¹⁵ 2020, or 2021.¹⁶ These repeated kill orders came despite the continued failure of the producers involved to use effective non-lethal measures to prevent conflict, such as effectively and consistently using range riders, keeping cattle away from wolf rendezvous and denning sites, and allowing the Department to deploy RAG boxes, fladry, and/or fox lights.¹⁷ Predictably, killing Togo wolves without addressing this underlying problem has not eliminated livestock-wolf conflict, as the Department reported another confirmed wolf predation on June 27, 2023.¹⁸

The Department also continued to kill wolves after the Commission’s failure in July 2022 to adopt wolf management rules. In August 2022, Director Susewind issued an order to kill wolves in the Smackout pack, and shortly afterwards, issued an order to kill members of the Leadpoint pack, which had a neighboring territory. In both cases, there had been repeated conflicts with these packs, and the producers involved had not taken basic steps to protect their cattle. In both cases, the livestock predations leading to the kill orders involved cattle belonging to the same ranching family responsible for 75% of the 44 wolves it has killed or authorized to be killed over the past decade.¹⁹

¹² Email from Stephen Pozzanghera, Regional Director, Washington Department of Fish and Wildlife, to Kelly Susewind, Director, Washington Department of Fish and Wildlife (Nov. 8, 2021). Obtained through PDR and included in [resource packet](#).

¹³ Letter from Washington Fish and Wildlife District 3 Team to Kelly Susewind, Director, Washington Department of Fish and Wildlife, and Stephen Pozzanghera, Regional Director, Washington Department of Fish and Wildlife (Nov. 5, 2021). At page 10. Obtained through PDR and included in [resource packet](#).

¹⁴ District 1 Team meeting minutes: Togo Pack Recommendation, Washington Department of Fish and Wildlife, Olympia, Washington (May 17, 2022). Obtained through PDR and included in [resource packet](#).

¹⁵ Togo Pack Update, Washington Department of Fish and Wildlife, Oct. 18, 2019, available at: <https://wdfw.wa.gov/species-habitats/at-risk/species-recovery/gray-wolf/updates/togo-pack-update-10> (last viewed Jul. 12, 2023).

¹⁶ Letter from District 1 Team to Kelly Susewind, Director, Washington Department of Fish and Wildlife, Olympia, Washington (Aug. 24, 2021). Obtained through PDR and included in [resource packet](#).

¹⁷ Email from Stephen Pozzanghera, Regional Director, Washington Department of Fish and Wildlife, to Kevin Robinette, Regional Wildlife Program Manager, Washington Department of Fish and Wildlife, et al. (May 31, 2022). Obtained through PDR and included in [resource packet](#).

¹⁸ Monthly Wolf Report – June 2023, Washington Department of Fish and Wildlife, Jul. 10, 2023, available at: <https://wdfw.wa.gov/species-habitats/at-risk/species-recovery/gray-wolf/updates/monthly-wolf-report-june-2023> (last viewed Jul. 11, 2023).

¹⁹ *Wolves Killed By WDFW*, Washington Wildlife First, updated September 15, 2023 ([Exhibit B](#)).

- After the Department killed two Leadpoint pack wolves on September 27-28, Director Susewind issued a new order on October 9 that authorized the killing of another Leadpoint wolf. Days later, the Department rescinded this authorization,²⁰ after Washington Wildlife First inquired about reports that the Department had found unburied cattle carcasses in a pasture in the vicinity of the reported predations.²¹ This carcass pile was drawing wolves into the area where the cattle were grazing and creating livestock-wolf conflict. In addition, this discovery showed the Department had failed to conduct any due diligence in advance of its previous report that the affected producers had been properly disposing of carcasses—one of the factors the Department had used to justify its killing of two Leadpoint wolves.²²
- In executing the Smackout pack kill order, the Department accidentally killed a five-month-old pup from the Dirty Shirt pack that had wandered into the sights of agency sharpshooters.²³ The Department suspended the Smackout pack kill order on September 8 following this error,²⁴ but then resumed its killing operations on October 7 following additional predations. The Department killed a yearling female from the Smackout pack on October 10.²⁵ The 2022 kill order was the Department’s fourth in five years against the Smackout pack, as the affected producers have repeatedly failed to take appropriate proactive measures to protect their cattle.²⁶ The Smackout pack territory is adjacent to the Leadpoint pack territory, and both wolf packs were implicated in predations of cattle belonging to the same producer. As a result, it seems likely that the Smackout wolves had been lured into conflict by the same carcass pile that the Department failed to report until after it had already killed four wolves. However, although Washington Wildlife First submitted a public disclosure request for information on the Smackout pack kill order more than 10 months ago, the Department has failed to provide even the most basic information in

²⁰ Leadpoint pack update, Washington Department of Fish and Wildlife, Oct. 13, 2022, available at: <https://wdfw.wa.gov/species-habitats/at-risk/species-recovery/gray-wolf/updates/leadpoint-pack-update-6> (last viewed Jul. 11, 2023).

²¹ Email from Samantha Bruegger, Executive Director, Washington Wildlife First, to Julia Smith, Wolf Policy Lead, Washington Department of Fish and Wildlife (Oct. 11, 2022). Included in [resource packet](#).

²² WDFW Director reauthorizes lethal action in Leadpoint wolf pack territory, Washington Department of Fish and Wildlife, Oct. 10, 2022, available at: <https://wdfw.wa.gov/species-habitats/at-risk/species-recovery/gray-wolf/updates/wdfw-director-reauthorizes-lethal-action-leadpoint-wolf-pack-territory> (last viewed Jul. 11, 2023).

²³ Smackout pack update, Washington Department of Fish and Wildlife, Sept. 8, 2022, available at: <https://wdfw.wa.gov/species-habitats/at-risk/species-recovery/gray-wolf/updates/smackout-pack-update-2> (last viewed Jul. 11, 2023).

²⁴ *Id.*

²⁵ Smackout pack update, Washington Department of Fish and Wildlife, Oct. 13, 2022, available at: <https://wdfw.wa.gov/species-habitats/at-risk/species-recovery/gray-wolf/updates/smackout-pack-update-4> (last viewed Jul. 11, 2023).

²⁶ Smackout, Washington Department of Fish and Wildlife, available at: <https://wdfw.wa.gov/species-habitats/at-risk/species-recovery/gray-wolf/packs/smackout?page=0> (last viewed Jul 12, 2023).

response—including the recommendations from the district team and regional director that would have been sitting on Director Susewind’s desk when he issued the order.²⁷

Finally, in August of this year, the Department killed two wolves, an adult male and yearling female, from a group of wolves the Department has referred to as the WA139 group. Wolf 139 was formerly with the Tucannon pack but dispersed in early 2023 and is accompanied by several other wolves, also likely originating from the Tucannon pack. A kill order was authorized by the Director on August 23 for up to two wolves after the WA139 group’s involvement in conflicts with livestock belonging to four different owners in Asotin County.

In all, since the 2020 Petition was filed in May 2020, the Department has killed or authorized the killing of 12 wolves, meaning it has now killed or authorized the killing of 44 wolves on behalf of the livestock industry over the past 12 years. Unless the Department changes its approach and the framework for making these decisions, this number will grow exponentially as wolves expand into new territories.

In October 2022, the Department confirmed that six wolves had been illegally poisoned in northeastern Washington in February of that year.²⁸ The Department’s 2022 annual report confirmed that three more wolves had been illegally killed during 2022.²⁹ The Department’s August 2023 monthly update states that the death of a wolf found in Stevens County that month is under investigation, an indication the wolf likely was poached.³⁰ Almost all these deaths occurred in areas which have experienced chronic livestock conflicts.

As the Department notes in its annual reports, the vast majority of wolf packs are not involved in any conflicts with livestock. In fact, over the past 12 years that the Department has issued annual reports, while the wolf population has grown from 19 wolves in three packs³⁰ to 216 wolves in 37 packs, on average each year fewer than one-third of Washington’s packs are involved in any livestock conflicts. In 2022, only 19% of Washington’s packs were involved in livestock predation incidents.³¹ Nevertheless, repeated conflicts continue in the same areas in northeast Washington, where livestock producers are not taking adequate steps to protect livestock grazing in prime wolf country. As Governor Inslee predicted, under the current framework, such conflicts will persist, and the Department will continue to regularly kill wolves in the same area. Even worse, the

²⁷ See Letter from Samantha Bruegger, Executive Director, Washington Wildlife First, to Public Records Officer, Washington Department of Fish and Wildlife (Sept. 9, 2022) (included in [resource packet](#)). As of July 18, 2023, the Department had only provided *nine documents* in response to this request, not including any of the district or regional recommendations provided to Director Susewind before he issued this kill order.

²⁸ Monthly Wolf Report – September 2022, Washington Department of Fish and Wildlife, Oct. 10, 2023, available at: <https://wdfw.wa.gov/species-habitats/at-risk/species-recovery/gray-wolf/updates/monthly-wolf-report-september-2022> (last viewed Jul. 11, 2023).

²⁹ Washington Gray Wolf Conservation and Management 2022 Annual Report. Washington Department of Fish and Wildlife, Confederated Tribes of the Colville Reservation, Spokane Tribe of Indians, Yakama Nation, Swinomish Tribe, and U.S. Fish and Wildlife Service, Helena, Montana. 65 pp. At page 3, available at: <https://wdfw.wa.gov/sites/default/files/publications/02419/wdfw02419.pdf>. (last viewed July 18, 2023).

³⁰ Monthly Wolf Report – August 2023, Washington Department of Fish and Wildlife, Sept. 11, 2023, available at <https://wdfw.wa.gov/species-habitats/at-risk/species-recovery/gray-wolf/updates/monthly-wolf-report-August-2023> (last viewed September 12, 2023).

Department’s current approach will make conflict more likely in other areas of the state as wolves disperse and establish territories in new locations.

These problems will persist unless and until the Department provides leadership showing that non-lethal deterrents are a better way to reduce livestock-wolf conflicts—and until it refuses to use taxpayer money to kill wolves unless the involved producers have taken meaningful steps to protect their livestock. It is in the interests of the Department, wolf advocates, and livestock producers to put in place enforceable rules that will provide a consistent and predictable wolf management framework, requiring the Department to work with livestock producers to ensure they are using best management practices to prevent livestock-wolf conflict before the state will use taxpayer money to kill wolves.

Such rules will also reaffirm the state’s commitment to wolf recovery and combat the intolerance that is leading to more illegal killings, such as the horrific poisoning of wolves in February 2022.³¹ With no scientific substantiation at all, representatives from wildlife agencies managing wolves at both the state and federal levels often claim that killing of wolves by agency staff or private individuals for livestock conflicts, or via government-sanctioned wolf hunting seasons, promotes tolerance for wolves. In fact, the body of peer-reviewed published research on this subject reaches the opposite conclusion: *such killing increases social intolerance of wolves and illegal killing of wolves.*³²

IV. “Caught in the Act” History and Killings

The 2011 Washington Wolf Conservation and Management Plan (“Plan”) sets forth management options for wolves while listed as endangered, threatened, or sensitive.³³ Table 9 of the Plan delineates the circumstances under which individual livestock owners (including family members and authorized employees) may lethally take wolves if “in the act of attacking” livestock. The Plan defines “in the act of attacking” as “actively biting, wounding, or killing,” and “livestock” as “cattle, pigs, horses, mules, sheep, llamas, goats, guarding animals, and herding dogs.”³⁴

Whether wolves are listed as endangered, threatened, or sensitive, the Plan states that livestock owners (including family members and authorized employees) may lethally take a wolf in the act of attacking **livestock** “on private land they own or lease and public grazing allotments, **with an issued permit, after documented depredations (injury or killing) in the area.**”³⁵

Thus, the Plan established six requirements which must be met for the lethal take of wolves in the act of attacking:

³¹ Chapron and Treves, 2016; Laaksonen and Sanchez-Molina, 2018; Oliynyk, 2023. Included in [resource packet](#).

³² *Id.*

³³ Wiles, G.J., H.L. Allen, and G.E. Hayes. 2011. Wolf conservation and management plan for Washington. Washington Department of Fish and Wildlife, Olympia, Washington. 297 pp. (Wolf Management Plan). At page 87, Table 9. Available at: <https://wdfw.wa.gov/sites/default/files/publications/00001/wdfw00001.pdf> (last viewed July 18, 2023).

³⁴ *Id.* at pp. 233-34.

³⁵ *Id.* at page 87, Table 9.

- 1) Qualified individuals include only livestock owners, family members, and authorized employees.
- 2) Qualified animals being attacked by wolves include only livestock (which includes guarding animals and herding dogs).
- 3) The lethal take must occur on private lands owned or leased by the livestock owner or on grazing allotments for which they have a permit.
- 4) The wolf's action must be one of "actively biting, wounding or killing."
- 5) The qualified livestock owner must have received a permit from the Department in advance of killing any wolf.
- 6) Prior to receiving the permit and prior to killing any wolf, there must have first been wolf predations in the area that led to death or injury of livestock.

However, in the spring of 2013, the Washington state legislature introduced bills requiring the Commission to conduct rulemaking to allow private individuals to kill a wolf without a permit for attacking any domestic animal.³⁶ The legislature did not pass these bills, but in response to this pressure, the Commission enacted an emergency rule in April and subsequently made the rule permanent in October as WAC 220-440-080. WAC 220-440-080 allows for any private individual anywhere to kill a wolf, without first requiring a permit or prior livestock predations, if the wolf is attacking any domestic animal. The rule thus significantly expanded the ability for private citizens to kill wolves, eliminating the requirement that the Department issue a permit first. It also scuttles the requirement under the Wolf Plan that the wolf be "in the act of attacking" by replacing that term with the imprecise word "attacking."

Since the enactment of WAC 220-440-080, the Department has reported nine wolves killed by individuals asserting the animal was in the act of attacking livestock (or "caught in the act," as it is sometimes called) and one wolf shot for "caught in the act" but whose body could not be found. Investigations by Department law enforcement ensued, but in all instances the killing was deemed lawful. This is despite the fact that, in most instances, the wolf was not "in the act" of attacking ("biting, wounding or killing"), nor even "attacking," but was instead chasing or, in some cases, not even chasing but simply nearby. In at least one case, the wolf was nearly 60 yards away from a fenced pasture containing livestock. Of the 10 total shootings of wolves for "caught in the act of attacking," we have obtained public documents in five of the instances, which took place between 2017 and 2019. We also have recently submitted a request for public documents pertaining to the remaining five known incidents; four took place in 2022 and one in 2023. Representative agency documents from the five incidents which occurred between 2017 and 2019 are summarized below, with pertinent documents from each attached as exhibits:

- Caught in the Act Killing June 30, 2017, in Stevens County – A law enforcement report indicates that two wolves were chasing cattle; a range rider had taken a rifle to where the wolves were, instead of the shotgun they usually use for hazing, and shot and killed one of the wolves with the rifle, then returned to their campsite to retrieve their shotgun to haze the other wolves away. The range rider would not answer a question posed by law enforcement

³⁶ H.B. 1191 (Wash. 2013); S.B. 5197 (Wash. 2013).

as to why they did not initially take their hazing shotgun with them when they shot and killed the wolf. When killed, the wolf was not attacking nor in the act of attacking (biting, wounding, or killing) livestock. *See* [Exhibit C](#).

Caught in the Act Killing Oct 27, 2017, in Ferry County – A law enforcement report indicates wolf was chasing cows and was 30-60 feet away from the cows when it was shot and killed with no warning shots fired to attempt to first haze it away. When killed, the wolf was not attacking nor in the act of attacking (biting, wounding, or killing) livestock. *See* [Exhibit D](#).

- Caught in the Act Killing February 4, 2019, in Adams County – A Department update to the public advised that a ranch employee in northeast Adams County killed a wolf “in a caught in the act situation.” Per the Department’s update, the ranch employee noticed cattle running, then saw three wolves chasing the cattle. Yelling at the wolves caused two to retreat. When the third wolf paused then continued to chase a cow, the ranch employee shot and killed the wolf from approximately 120 yards away. When killed, the wolf was not attacking nor in the act of attacking (biting, wounding, or killing) the cow. *See* [Exhibit E](#).
- Caught in the Act Killing April 29, 2019, in Okanogan County – A law enforcement report indicates the wolf was killed with a 22-250 rifle as the wolf was walking towards a pasture containing newborn calves. The livestock’s owner first yelled at the wolf and when it continued walking towards the pasture, instead of trying to scare it away by shooting near the wolf, the livestock owner shot and killed the wolf. The report indicates the animal fell where it was shot, 56 yards away from the pasture. When killed, the wolf was not attacking nor in the act of attacking (biting, wounding or killing) livestock. *See* [Exhibit F](#).
- Caught in the Act Killing July 24, 2019, in Ferry County – Internal Department communications note that a livestock owner using a high-caliber rifle shot and killed a black wolf observed taking down and standing over a calf (the report alternately refers to the affected livestock as a calf or as a cow). *See* [Exhibit G](#).

Regarding killing wolves that are “in the act of attacking livestock,” “[w]olves stalking, looking at, or passing near livestock, present in a field with livestock, or present on private property are not considered to be in [the act] of attacking.”³⁷ Yet it is clear from the five actual incidents described above, in nearly every instance, that this is all the wolves were doing. Regardless, the wolves were gunned down, and those who shot them are being relieved of any legal liability for their actions based on the extremely lax, vague wording of the emergency rule adopted by the Commission in 2013. We therefore are including in this administrative petition for rulemaking rule language to clarify “caught in the act” killings of wolves to provide certainty in these specific situations and to realign what is allowed with the intention of the state Wolf Plan.

³⁷ Wolf Management Plan at page 89.

V. Our Proposed Rule Changes

Our proposal would amend WAC 220-440-080 to address the issues identified above and in the 2020 Petition, providing the Commission with another opportunity to bring accountability and transparency to the state's wolf management and fulfill Governor Inslee's request for rules to regulate when the state can kill wolves. *See* Proposed Rules (Attachment I). Our proposed rule changes would do the following:

- Require three qualifying wolf predations on livestock within 30 days before the Department may consider killing wolves, all of which are confirmed, and at least two of which resulted in the death of livestock. This provision is similar to the standard in the Protocol, but it would make that minimum threshold mandatory and enforceable, while eliminating the Protocol's option of killing wolves after four predations in a 10-month window. There is no science to support the 10-month time period, which spans different grazing seasons and fails to take into account the substantial shifts in wolf packs and grazing conditions that can take place during this time period.
- Set minimum standards before the Department can issue a kill order against a wolf pack, including requiring that two appropriate proactive deterrents are place before such an order is considered. The proposal also defines what the Department may count as "range riding" before it qualifies as an appropriate proactive deterrent. This is similar to language in the Protocol, but further defines those standards and makes them enforceable.
- Eliminate the killing of wolves on public land or as a result of predations of livestock grazing on public land. First and foremost, our public forests should be havens for wildlife, not pastures for livestock. Although Washington cannot change federal grazing policy, it can take a stand against "controlling" wildlife on public lands for the benefit of private industry. A poll the Washington Wildlife First commissioned last year revealed that only 25% of the public supports killing wolves as result of predations on cattle grazing on public forest land.³⁸ If our wildlife is going to be able to survive the threats its faces, including habitat loss, we must set aside some portions of the state where wildlife is free to be wild.
- Limit any kill order to 30 days in duration and to the killing of just one wolf, with a requirement that the Department must reasonably believe that any wolves that it kills were responsible for the predations. The Department can present no science to show that killing wolves who are not involved in predations helps to resolve livestock-wolf conflict. Rather than issuing open kill orders to kill any two random wolves, which is the current practice, this proposal would require the Department to identify "problem wolves" and seek to target only those wolves.
- Limit the use of the "caught in the act" provision as a loophole that allows livestock owners to kill wolves without any accountability.

³⁸ Public Policy Polling, *Poll on Washington Attitudes Toward Fish and Wildlife*, October 17-18, 2022, available at: <https://5609432.app.box.com/file/1054304133979?s=kutlutofnc2v5fybaq7uw0z9klzsisve9> (last viewed July 18, 2023).

- Prevent the Department from killing wolves due to livestock predations in close proximity to known core wolf areas, including dens and rendezvous sites. The Department has repeatedly killed wolves and eliminated entire wolf packs, including the Profanity Peak Pack and the OPT Pack, due to entirely avoidable conflicts that resulted after cattle were allowed to graze in close proximity to core wolf areas.
- Prevent the Department from killing wolves when doing so will orphan or jeopardize the survival of pups. On multiple occasions, the Department has killed one or both members of a breeding pair, or even most members of the pack, leaving behind pups unlikely to survive on their own. Our proposal would also prevent the Department from killing wolves younger than six months old and incapable of hunting livestock (or anything larger than mice or rabbits).
- Mandate that livestock owners sign damage control prevention agreements before the Department will consider killing wolves as a result of predation on their livestock. This basic measure is already required before the Department will reimburse livestock owners and farmers for losses due to wildlife. We should require at least as much before the state uses taxpayer dollars to *kill* wolves.
- Instruct the Department to develop a structured decision-making framework for approaching any decision to kill wolves and submit that framework for Commission approval. This would eliminate the *ad hoc* approach to wolf management, while providing both flexibility *and* accountability, and setting up a framework to gather information that will allow the Department to develop better approaches.
- Require the Department to develop conflict mitigation plans for chronic conflict areas. This idea has been circulating for years, was part of the 2022 Draft Rules, and has been widely discussed in the WAG. It is long past time to formalize it in the rules, to prevent the Department from continuing to kill wolves year after year in the same areas and for the same livestock producers, when no steps have been taken to address the underlying problems that cause the conflicts in the first place.
- Institute transparency measures, such as requiring the Department to post key information related to wolf management on its website. This will increase public accountability and trust and decrease the number of public disclosure requests seeking information on actions related to wolves.

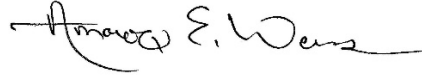
VI. Conclusion

We believe our proposal offers the Commission an opportunity to chart a better path forward, setting an example for the rest of the country to follow for science-based wolf management that values the crucial role wolves play in a healthy ecosystem. When considering this rulemaking petition, we urge the Commission to welcome a panel of representatives from the undersigned organizations to testify before the full Commission or the Wildlife Committee, so we may explain why this rule change is important and answer any questions Commissioners may have.

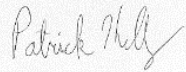
Sincerely,



Claire Loeb Davis
Board President/Interim Executive Director
Washington Wildlife First



Amaroq Weiss
Senior Wolf Advocate
Center for Biological Diversity



Patrick Kelly
Montana/Washington State Director
Western Watersheds Project



Bethany Cotton
Conservation Director
Cascadia Wildlands



Lizzy Pennock
Carnivore Coexistence Attorney
WildEarth Guardians



Suzanne Lieberman
Washington State Director
Animal Wellness Action
Center for a Humane Economy



Hannah Thompson-Garner
Director of Advocacy and Mission
Advancement
Northwest Animal Rights Network



Tim Coleman
Executive Director
Kettle Range Conservation Group



Lynn Mason
Grassroots Organizer
Coexisting with Cougars in Klickitat County



John Rosapepe
Pacific Northwest Representative
Endangered Species Coalition

A handwritten signature in black ink that reads "Brooks Fahy". The signature is written in a cursive, flowing style.

Brooks Fahy
Executive Director
Predator Defense

ADDENDUM 1

Frequently Asked Questions related to Proposed Wolf Management Rules

1. How will adoption of rules regarding management of livestock-wolf conflicts impact wolf recovery?

The proposed rule will enhance wolf recovery, by ensuring there is a robust source population to produce immigrants to other areas of the state, and putting in place a more proactive, transparent process going forward for managing and helping to avoid livestock wolf conflict as the wolf population expands.

The Department's current livestock-wolf conflict management approach has resulted in repeated actions to kill wolves in the northeast region of the state, often in the same territories year after year. As a consequence, the Department is continually creating open territory within the region, which is then filled by new wolves dispersing from neighboring packs. The Department's lather-rinse-repeat approach to addressing livestock conflicts has likely been a significant factor in preventing wolves in northeastern Washington from dispersing westward in the numbers and time span predicted by the 2011 Wolf Conservation and Management Plan (Wolf Plan). When nearby territory is occupied, wolves disperse to find places to establish their own territories, sometimes traveling great distances to do so. Repeatedly killing wolves and even eliminating entire packs in the most-highly-wolf-occupied region of Washington merely puts out a welcome mat for nearby dispersing wolves to move into this prime wolf habitat, eliminating their incentive to travel any further. Not only is this approach ineffective for addressing chronic livestock-wolf conflicts, but it is counter-productive to meeting the Wolf Plan's objective of the distribution and recovery of wolves statewide.

Compounding this unintended and preventable consequence, widescale killing of wolves is taking place in Idaho and British Columbia, the two key source populations of wolves for dispersal into Washington. Since 2011, when federal protections were lifted for wolves in Idaho, that state has aggressively sanctioned recreational wolf hunting and trapping. Each year Idaho has liberalized how, when and where wolves can be killed. In recent years, Idaho has enacted laws and regulations designed to drastically reduce its wolf population. As a result, in the past year alone, Idaho's wolf population has declined by 13%.¹ In British Columbia, starting in 2015 and renewed again in the winter of 2021-2022 for another five years, the Ministry of Forests, Lands, Natural Resource Operations and Rural Development authorized a program to aerially gun down wolves to reduce predation on caribou herds. By January 2022, more than 1,400

¹ Idaho Department of Fish and Game. January 27, 2023. Idaho's wolf population has dropped by about 13 percent. <https://idfg.idaho.gov/article/idahos-wolf-population-has-dropped-about-13-percent>

wolves had been killed in this predator eradication program and an estimated 200-300 wolves will be killed each year going forward.²

The unmitigated war on wolves in Idaho and British Columbia has significantly dampened the potential for wolf dispersal from those locations into Washington and Oregon.³ As wolf dispersal into Washington slows, the rate of migration of wolves from eastern and northern Washington into the South Cascades region will also slow—and likely already has. In addition, as Idaho and British Columbia kill more wolves and create vacancies in their wolf habitat, dispersing wolves from Washington are more likely to move to the north and east to fill those vacancies, rather than journeying westward towards the southern Cascades. Once dispersing wolves leave Washington, they are subject to the aggressive wolf-killing policies of these neighboring states and provinces. Of the 43 dispersing wolves tracked since 2011, 23 (53%) have dispersed out of state, with 12 of those traveling to British Columbia.⁴ One radio-collared wolf from Washington’s Huckleberry pack is known to have dispersed as far west as central Montana, where he was shot and killed.⁵

The Commission can do nothing to halt the killing of wolves in Idaho or British Columbia. It can do nothing to prevent wolves in northeast Washington from dispersing outside the state into Idaho or British Columbia. But it can take affirmative action in Washington to allow the existing wolf territory in the eastern half of the state to fill in and remain occupied, thus increasing the likelihood that wolves will disperse from there into the Wolf Plan’s third recovery zone, which still has no established breeding pairs.

2. Will enacting rules result in increased litigation against the state?

No. In fact, the opposite is true. Enacting enforceable rules that promote transparency and accountability will instill public confidence that in making wolf-management decisions the Department is adhering to principles which are based in science and vetted through a public process, rather than taking action based on political expediency or pressure from individuals or special interest groups. Because rules allow everyone to know what to expect, they also have a buffering effect that keeps the political “temperature” down.

² Dickson, C. 2022. B.C. extends aerial wolf cull for five more years. CBC News January 31, 2022. [B.C. extends aerial wolf cull for five more years | CBC News](#)

³ Wielgus, R. 2019. Wolf delisting and recovery in the Pacific Northwest. Unpublished report for Western Environmental Law Center – legal brief (available upon request).

⁴ See generally Washington Department of Fish and Wildlife, *Wolf Annual Reports* (2011-2022).

⁵ Landers, R. October 26, 2016. Washington wolf shot in Montana after roaming 700 miles. *Spokesman Review*. <https://www.spokesman.com/blogs/outdoors/2016/oct/24/washington-wolf-shot-montana-after-roaming-700-miles/>

Oregon provides a good example. When the Oregon Fish and Wildlife Commission first adopted the state's wolf conservation and management plan on February 11, 2005, the Commission also adopted regulations regarding how livestock-wolf conflicts would be managed through a rule-making process.⁶ The rules were recommended by Oregon's state wildlife agency and the stakeholder group which advised the agency in crafting the wolf plan. Oregon's record speaks for itself: from the adoption of rules in 2005 to the present, only one lawsuit has been filed over how the state managed livestock-wolf conflicts. In 2011, conservation groups brought to the state's attention that a portion of the rules that had been adopted violated the plain language of the state's endangered species act and exceeded an exemption in an existing "animal damages" statute. The lawsuit was filed in Oct 2011 and settled in July 2013.⁷ Since that time, no new lawsuits have been filed related to livestock-wolf conflict management actions. (One lawsuit was brought in late 2015 over the state's premature state-delisting of wolves, but this suit was unrelated to the existence of rules or how Oregon was managing livestock-wolf conflicts).

In stark contrast, individuals and advocacy groups have filed suit challenging six different wolf kill orders issued by the Department since 2017, expressly because the lack of clear rules creates uncertainty, and the ability to argue about whether the Department's purely discretionary decisions were "arbitrary and capricious." The Department also creates an incentive to file lawsuits by continuing to be unwilling to post important decisional documents on its website and taking many months to years to respond to even simple public disclosure requests. The unintended consequences of this lack of transparency is that the quickest way for the public to push back the Department's spin and get the facts behind agency kill orders is to file a lawsuit.

⁶ Oregon Wolf Conservation and Management Plan. 2005. Oregon Department of Fish and Wildlife. https://dfw.state.or.us/Wolves/docs/Final_Wolf_Plan_With_Appendices_December_2005.pdf See page 13 of the Plan indicating rules were simultaneously adopted upon adoption of the Plan on February 11, 2005; OAR 635-110-0000

https://secure.sos.state.or.us/oard/viewSingleRule.action;JSESSIONID_OARD=c4qQTSwEAIvyWT5jfv7WHXBiz-8IUY76gI33zXJgCCcOryG-qmCI!-1370744543?ruleVrsnRsn=258787;

OAR 635-110-0005

https://secure.sos.state.or.us/oard/viewSingleRule.action;JSESSIONID_OARD=c4qQTSwEAIvyWT5jfv7WHXBiz-8IUY76gI33zXJgCCcOryG-qmCI!-1370744543?ruleVrsnRsn=258789;

OAR 635-110-0010

https://secure.sos.state.or.us/oard/viewSingleRule.action;JSESSIONID_OARD=c4qQTSwEAIvyWT5jfv7WHXBiz-8IUY76gI33zXJgCCcOryG-qmCI!-1370744543?ruleVrsnRsn=258796;

OAR 635-110-0020

https://secure.sos.state.or.us/oard/viewSingleRule.action;JSESSIONID_OARD=c4qQTSwEAIvyWT5jfv7WHXBiz-8IUY76gI33zXJgCCcOryG-qmCI!-1370744543?ruleVrsnRsn=258797;

OAR 635-110-0030

https://secure.sos.state.or.us/oard/viewSingleRule.action;JSESSIONID_OARD=c4qQTSwEAIvyWT5jfv7WHXBiz-8IUY76gI33zXJgCCcOryG-qmCI!-1370744543?ruleVrsnRsn=258798

⁷ *Cascadia Wildlands et al. v. Department of Fish and Wildlife et al.*, No. A149672 (Or. Court of Appeals).

With an enforceable rule, the standards are clear. The Department can still exercise discretion once certain thresholds are met, but those thresholds provide a bulwark against arbitrary and capricious actions and eliminate disagreements to argue about in court. Litigation only becomes more likely once there are enforceable rules if you assume that the agency is going to *break* those rules. We assume that the Department will be law-abiding and follow the rules set by the Commission, in which case there would be no basis to bring a suit.

3. Will the proposed rule result in more wolf predations on livestock?

Livestock-wolf conflicts are influenced by a number of factors that the Department cannot control. However, if the Department prioritizes the use of non-lethal deterrents and takes the easy (but illusory) fix of lethal control off the table, there is good reason to believe that there will be fewer conflicts, not more.

First of all, it is important to remember that lethal control is ineffective at reducing livestock-wolf conflicts.⁸ Although killing an entire pack may decrease predations in the near term, that action merely creates a vacancy for dispersing wolves to fill. Unless the underlying causes of conflict have been corrected, the conflicts will just begin again during the next grazing season. Not only does the science tell us this, but we have seen example after example in Washington.

Washington has destroyed entire packs in the same region of the Kettle Range in Colville National Park on three occasions: the Profanity Peak pack in 2016, the Sherman pack in 2017, and the OPT pack in 2019 (after killing two wolves from the pack the year before).⁹ Each time, litigation showed that the livestock owners had failed to use effective non-lethal means to protect their cattle, had turned the cattle out onto vast Forest Service allotments with no supervision all

⁸ See, e.g., Treves A., M. Krofel, and J. McManus. Predator control should not be a shot in the dark. *Front Ecol Environ.* 14: 380–388 (2016), https://faculty.nelson.wisc.edu/treves/pubs/Treves_Krofel_McManus.pdf; Lennox, R. J., Gallagher, A. J., Ritchie, e. G., & Cooke, S. J. Evaluating the efficacy of predator removal in a conflict-prone world. *Biological Conservation*, 224: 277-289 (2018), https://www.researchgate.net/publication/325857871_Evaluating_the_efficacy_of_predator_removal_in_a_conflict-prone_world; Bergstrom, B.J. Carnivore conservation: shifting the paradigm from control to coexistence. *J. Mammal.* 98 (1): 1-6 (2017), https://www.researchgate.net/publication/312118535_Carnivore_conservation_Shifting_the_paradigm_from_control_to_coexistence; see also Stone, S. A. et al. Adaptive use of nonlethal strategies for minimizing wolf-sheep conflict in Idaho. *Journal of Mammalogy*, 98(1): 33-44 (2017), https://www.researchgate.net/publication/313875763_Adaptive_use_of_nonlethal_strategies_for_minimizing_Wolf-sheep_conflict_in_Idaho; van Eeden, L., Eklund, A., Miller, J.R.B. . . . 17 co-authors. 2018. Carnivore conservation needs evidence-based livestock protection. *PLOS Biology* <https://doi.org/10.1371/journal.pbio.2005577> <https://faculty.nelson.wisc.edu/treves/pubs/van%20Eeden%20et%20al.%202018.pdf>; Santiago-Avila, F.J., Cornman, A.M., Treves, A. 2018. Killing wolves to prevent predation on livestock may protect one farm but harm neighbors. *PLOS One* 12:e0189729 https://faculty.nelson.wisc.edu/treves/pubs/Santiago-Avila_etal.pdf; Elbroch, L. and Treves, A. 2023. Why might removing carnivores maintain or increase risks for domestic animals? *Biological Conservation* 283: 110106. https://faculty.nelson.wisc.edu/treves/pubs/Elbroch_Treves_2023.pdf.

⁹ See [Petitioners' Corrected Opening Brief](#), *Huskinson v. WDFW et. al.*, No. 19-2-20227-1 (April 21, 2020) at 5-20, also available with links to exhibits as part of [Petitioners' Combined Briefing and Cited Materials](#).

season, and had allowed them to graze on top of wolf dens and rendezvous points. Those practices created the conflicts, and as long as the practices continued, so did the conflicts—even as pack after pack was destroyed.

Chapter 4 of the Wolf Plan describes the experiences of other states with wolf populations, and notes that many factors influence rates of wolf predation on livestock, thus making it somewhat difficult to predict where and when they will occur. Influential factors the Plan notes include “proximity of livestock to wolf home ranges, dens, and rendezvous sites; abundance of natural prey and livestock; amount and type of vegetative cover; time of year; livestock husbandry methods in both the area of concern and adjacent areas; the use of nonlethal deterrents and lethal take; pasture size; proximity to roads, dwellings, and other human presence[.]”¹⁰

The Wolf Plan does, however, make predictions about the potential number of livestock predations by wolves in Washington, by extrapolating from data collected in these other states. For instance, the Plan predicts annual livestock losses in Washington from a population of 50 wolves would be around 1-6 cattle and 7-16 sheep; from a population of 100 wolves would be around 2-12 cattle and 14-35 sheep; from a population of 200 wolves would be around 6-28 cattle and 20-60 sheep; and from a population of 300 wolves would be around 12-67 cattle and 22-92 sheep.¹¹

Comparing these predictions to the figures reported in the Department’s annual wolf reports for 2011-2022, annual losses of livestock (including killed or injured cattle, sheep, and working dogs) have ranged from 0 confirmed or probable losses in a given year, up to 40 confirmed and 3 probable losses in a given year, all well within the range estimated by the Wolf Plan.¹² The most recent figures for Washington’s livestock holdings are 1,170,000 cattle, 52,000 sheep, 29,700 goats, and 17,000 hogs.¹³ Considering these numbers, the annual livestock losses to wolves in Washington are *de minimus*: it works out to 0.001%.

¹⁰ Wiles, G.H., L. Allen, and G.E. Hayes. 2011. Wolf conservation and management plan for Washington. Washington Department of Fish and wildlife, Olympia, Washington. 297 pp. at pp. 72-73.
<https://wdfw.wa.gov/sites/default/files/publications/00001/wdfw00001.pdf>

¹¹ *Id.* at pp. 84-85.

¹² Zero confirmed or probable in 2011; 16 confirmed and 4 probable in 2012; 4 confirmed and 0 probable in 2013; 39 confirmed and 0 probable in 2014; 8 confirmed and 0 probable in 2015; 15 confirmed and 7 probable in 2016; 13 confirmed and 0 probable in 2017; 33 confirmed and 2 probable in 2018; 25 confirmed and 1 probable in 2019; 40 confirmed and 3 probable in 2020; 13 confirmed and 8 probable in 2021; 26 confirmed and 3 probable in 2022. Sources are the Washington Department of Fish and Wildlife Annual Wolf Reports for 2011-2022.

¹³ USDA/National Agricultural Statistics Service 2022 State Agricultural Overview for Washington.
https://www.nass.usda.gov/Quick_Stats/Ag_Overview/stateOverview.php?state=WASHINGTON

The annual wolf reports also note that each year, the vast majority of wolf packs in Washington are not involved in livestock conflicts. Over the same 12-year span of 2011-2022, on average, only 27% of Washington's wolf packs were involved in livestock conflicts; in six of those 12 years, only 8% to 20% of the packs were involved in conflicts. In 2022, only 19% of Washington's wolf packs were involved in livestock predation incidents.

The experience in Oregon illustrates how livestock predations can be reduced by having enforceable rules that require the use of nonlethal conflict deterrents before the agency can consider killing wolves. During the nearly two-year period while settlement negotiations were ongoing from the 2011 lawsuit, a court injunction prevented the agency and livestock owners from killing wolves for livestock conflicts. Instead, both were required to use only nonlethal conflict deterrents to prevent, reduce and halt conflicts. In those nearly two years, the wolf population more than doubled (from 29 wolves to 64 wolves) but predations on livestock remained relatively stable (13 losses in 2011, 17 losses in 2012, 12 losses in 2013).¹⁴ While it cannot be definitively claimed that one was the cause of the other, we do know that during the nearly two years that killing wolves was off the table, the agency and livestock owners worked together to implement nonlethal conflict deterrents, the wolf population more than doubled in number thus aiding wolf recovery in the state, and conflicts between livestock and wolves remained stable, rather than increasing with the increasing wolf population. These are three goals Washington also seeks to achieve.

4. If rules are enacted, won't the Department lose flexibility to address each unique situation of livestock-wolf conflict?

No, the proposed rule language set forth standards by which the agency must exercise its discretion, but once those standards are met, the Department will continue to exercise its discretion in each unique circumstance. Much of the rule language merely sets forth minimum thresholds that must be met before the Department can consider killing wolves—what it does beyond that point is up to its discretion, and the Department will never be required to kill a wolf. Other parts of the rule simply mandate that the agency exercise its discretion in an organized and sensible way—such as through developing a structured decision-making framework.

Again, Oregon provides a good example. The rules enacted in Oregon in 2005 required transparency, accountability, and enforceability, and contained just as much detail as the rule we

¹⁴ Oregon Wolf Conservation and Management Plan 2011 Annual Report https://www.dfw.state.or.us/wolves/docs/oregon_wolf_program/2011_Wolf_Conservation_Management_Plan_Annual_Report.pdf; Oregon Wolf Conservation and Management Plan 2012 Annual Report https://dfw.state.or.us/Wolves/docs/oregon_wolf_program/Oregon_Wolf_Annual_Report_2012.pdf; Oregon Wolf Conservation and Management Plan 2013 Annual Report https://dfw.state.or.us/Wolves/docs/oregon_wolf_program/Oregon_Wolf_Annual_Report_2013.pdf

propose. Nevertheless, the Oregon Department of Fish and Wildlife has still exercised a tremendous amount of discretion in how it handles each situation of livestock-wolf conflict and has retained the ability to assess circumstances on a case-by-case basis. This is true today, just as it was in 2005 when the rules were first adopted.¹⁵

Further, much of our proposed rule language is drawn directly from principles which already are set forth in the Department's wolf-livestock interaction protocol. What our proposed rule would do is hold the Department accountable for following the protocol's principles and require the Department to be transparent when it makes decisions about the use of nonlethals and decisions to kill wolves.

5. Does the proposed rule seek to control how livestock owners run their businesses?

No. There is no part of our proposed rule that attempts to impose requirements for how livestock owners run their business or care for their cattle or sheep. Rather, our proposed rule language would merely provide standards for how the Department will respond in particular thresholds, and when it will consider killing wolves.

So while it would still be up to a particular livestock owner whether or not to protect their stock with nonlethal deterrents, our rule would provide that if the owner refuses to do so, state taxpayers will not pay to kill wolves when conflicts result from the owner's actions or inactions.

That is perfectly appropriate, because the Department does not work for the livestock industry. It works for the people of Washington, and it manages the state's wolves in trust for *all of us*.

6. How much would the proposed rule cost ranchers?

Again, it is important to keep in mind that killing wolves does not resolve conflicts with livestock. The Department knows this, but it needs to show the leadership to explain that to those demanding lethal control. The Department currently creates its own problem of false expectations, by holding out lethal control as some kind of ultimate solution if livestock owners will only just go through the motions of using nonlethal deterrents. As long as the Department keeps promoting lethal control as the solution, some livestock owners will continue to demand it—although the vast majority of livestock owners have been or would be willing to use non-lethal measures to avoid conflict, because their ultimate goal is simply to keep their stock safe. If the Department stops encouraging people to believe that killing is the answer, then it will have

¹⁵ OAR 635-110-0000 through 635-110-0030.

more ability to work cooperatively with livestock owners to find the best on-the-ground solutions to conflicts.

Not only does killing wolves fail to resolve conflicts, but this false “solution” costs the state a tremendous amount of money. The Department has spent hundreds of thousands of dollars in wolf kill operations it has undertaken in 2012, 2014, 2016, 2017, 2018, 2019, 2020, 2021, 2022, and 2023. For example, it cost taxpayers more than \$130,000 to kill the Profanity Peak pack.

Whether wolves are killed or not (and whether our proposed rule is approved, or not), it will cost livestock owners some money to successfully adapt their business practices to the presence of predators on the landscape—just as any business owner must invest to adapt to changing conditions. However, the state provides livestock owners with substantial financial assistance. First, the state funds grants and cost-sharing to help livestock owners implement non-lethal deterrents, including \$1.1 million being allocated by the Department of Agriculture this year.¹⁶ And the state compensates livestock owners for wolf-caused losses, including indirect losses, paying double the cost of the loss if the loss was incurred on acreage of 100 acres or more, based on the theory that those livestock owners may have had more losses than can be confirmed or discovered.¹⁷

Costs to individuals and to the state due to wolf presence are, however, dwarfed by the economic savings to individuals, counties and states as a result of wolf presence. A study in Wisconsin, where wolves have been reestablishing since the early 1980’s, has shown that the presence of wolves saves hundreds of thousands of dollars annually to individual counties because wolf presence there has resulted in reduced deer-vehicle collisions (DVC).¹⁸ Researchers found that wolf presence reduces DVCs not because wolves reduce deer abundance but because wolf presence changes deer behavior and that behavioral change reduces DVCs. While deer regularly forage in agricultural fields that often are near roads, wolf presence may cause deer to retreat to forested areas further from roads. Human hunters are only out in the field scouting for deer a few weeks out of the year during deer-hunting season, thus their presence does not reduce DVCs. But

¹⁶ The 2023 legislature awarded \$1.1 million to the state Department of Agriculture to award grants to fund non-lethal deterrents under RCW 16.76.020. *See* Washington State Dep’t of Agriculture, The NE Washington Wolf-Livestock Management Grant Request for Proposals, June 12, 2023, available at: https://cms.agr.wa.gov/WSDAKentico/Documents/DO/NE-Wolf-Livestock-Grant_2023-RFP.pdf.

¹⁷ Wiles, G.H., L. Allen, and G.E. Hayes. 2011. Wolf conservation and management plan for Washington. Washington Department of Fish and wildlife, Olympia, Washington. 297 pp. at pp. 90-93. <https://wdfw.wa.gov/sites/default/files/publications/00001/wdfw00001.pdf>.

¹⁸ Raynor, J.L., Grainger, C.A., and D.P. Parker. 2021. Wolves make roadways safer, generating large economic returns to predator conservation. *PNAS* 2021 Vol. 118 No. 22 e2023251118. <https://doi.org/10.1073/pnas.2023251118>.

wolves are present year-round, influencing deer behavior year-round, and the end result is a significant reduction in DVCs—a 24% reduction in each county, per the study results.¹⁹

Collisions between deer and vehicles generate a wide array of costs.²⁰ These include such things as damage to automobiles, loss of human life, injuries and medical bills for people injured in the collisions, lost income from missing work from being injured or having one's car totaled, increased insurance premium costs, and damage to structures associated with roadways requiring repairs. Savings to individual Wisconsin counties amounted to \$375,000 per year and by \$10.9 million per year in aggregate across the 29 counties.²¹ In comparison the state paid \$3.1 million between 1985-2019 in compensation for verified deaths or injuries caused by wolves to livestock, hunting dogs, and pets.²² Thus, the paper concluded, “the economic benefit of reduced DVCs exceeds the economic costs of verified wolf predation by a ratio of 63:1.”²³ Similar results have been shown in South Dakota, where recently established cougars have been found to prevent \$1.1 million in collision costs annually.²⁴

The question the commission should be asking itself is not, what will having rules in place cost ranchers? The question is, rather, if rules are in place to best ensure coexistence with wolves, reduce wolf predations on livestock, reduce the killing of wolves, and allow for wolf recovery to take place across the three recovery regions, what will be the costs savings for the state and individual counties—even while compensating livestock owners for losses and assisting with the costs of implementing coexistence measures? These two recent papers out of Wisconsin and South Dakota give insight into the answer to that question.

7. Does the proposed rule address compensation to ranchers for wolf-caused losses?

Our proposed rule does not address the system for compensating livestock owners for losses, although we acknowledge that there is likely room for improvement there. We are aware of complaints from livestock owners that the state compensation process is cumbersome and that payments are not made in a speedy fashion. We are not experts on this issue and have not proposed any solutions there but would urge the Commission to look more into that issue.

¹⁹ *Id* at p. 3.

²⁰ *Id.* at p. 5.

²¹ *Id.*

²² *Id.* at p. 4.

²³ *Id.*

²⁴ Gilbert, S.L., Sivy, K.J., Pozzanghera, C.B., Dubour, A., Overduijn, K., Smith, M.M., Zhou, J., Little, J.M. and L.R. Prugh. 2017. Socioeconomic benefits of large carnivore recolonization through reduced wildlife-vehicle collisions. *Conservation Letters*. July/August 2017. Vol 10(4): 431-439.

Our rules are aimed at reducing losses of livestock from wolves, reducing the killing of wolves due to conflicts, increasing accountability and transparency by the Department, and following the science on the most effective means to prevent, reduce or halt these conflicts. Our rules are aimed at stopping Washington's cycle of killing wolves and entire wolf packs as a "solution" to conflicts with livestock, only to see those conflicts return immediately. The current approach should end because it is not helping livestock owners deal with the root cause of these conflicts, it is using taxpayer money to kill state endangered wolves that the Commission is entrusted to protect, and it is hindering progress toward wolf recovery in Washington.

ADDENDUM 2

Suggested Issues to Consider

Although Petitioners spent extensive time and thought developing a proposed rule that includes the changes we believe should be enacted, we are under no illusion that the Commission is going to adopt our proposed rule wholesale. However, if the Commission is inclined to grant our rulemaking petition, we hope it will give Department management specific instruction about what it would like to see incorporated into its proposed rule—so we can all avoid wasting more time on the development of another rule that fails to enact any meaningful changes. Below are some of the questions raised by our proposed rule, which we suggest the Commissioners consider when deliberating on whether to grant the rulemaking petition.

1. Should taxpayers continue paying to kill wolves on public lands?
2. Should the provisions of the current Wolf-Livestock Protocol be put into rule form, to set predictable and enforceable standards for the Department's decisions to kill wolves?
3. When determining whether there have been enough predations to justify lethal removal, should the Department count predations that occurred 10 months prior, under different circumstances and often with a differently constituted wolf pack?
4. Should the Department kill wolves even when livestock owners have created the conflict, such as by having attractants near their cattle or knowingly grazing cattle on top of den sites, or if they have not attempted to avoid conflict through the use of reasonable non-lethal deterrents?
5. If the Department issues a kill order, should it attempt to target wolves responsible for predations, rather than indiscriminately killing wolves in retribution for livestock predations?
6. Should the Department be allowed to kill wolf pups that could not have possibly preyed on livestock, or to orphan wolf pups by killing both members of a breeding pair?
7. Before the Department kills wolves at the behest of livestock owners, should those livestock owners be required to meet at least the same requirements that they would need to fulfill before receiving monetary payment for their losses?
8. Should the Department develop a structured decision-making process to guide its decisions to kill wolves, which requires those decisions to be made in accordance with the best available science and provides for sufficient information to be gathered for proper adaptive management?
9. Should the Department take affirmative action to try to prevent livestock-wolf conflict from occurring in the same areas year after year?
10. Should the Commission eliminate the loophole that the current "caught-in-the act" provision provides, allowing landowners to shoot wolves even if they are nowhere near livestock at the time?
11. Should the Department be open and transparent about its wolf management practices and decisions to kill wolves, to increase public trust and eliminate the need to file lawsuits just to gain reliable information?

Attachment I
Proposed Amendments to WAC 220-440-080
September 15, 2023

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

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) Definitions:

(a) "Affected livestock producer" means any livestock producer who experiences wolf predation.

(b) "Confirmed wolf predation" refers to any event where trained department staff have found reasonable physical evidence to determine that a wolf caused the death or injury of livestock.

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

(d) "Physical act of attacking" means actual or imminent animal-to-animal physical contact, to include biting, wounding, or killing, but not merely observing, stalking, or pursuing.

(e) "Proactive deterrence measure" refers to an affirmative action taken to discourage wolf predation, which is appropriate to the conditions, and has been in place long enough prior to a confirmed wolf predation that the local department wildlife conflict specialist is confident it has had time to be effective.

(f) "Qualifying wolf predation" means a confirmed wolf predation on livestock belonging to a producer who has signed a damage control prevention agreement under WAC 220-440-040(3).

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

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

~~(21) 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.~~ The director may issue a permit to an owner of livestock, the owner's immediate family member, the agent of an owner, or the owner's documented employee to kill one gray wolf (Canis lupus) regardless of its state classification, if the wolf is in the physical act of attacking their livestock.

(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) The director may issue a permit under this section if the department has documented a confirmed wolf predation of the owner's livestock within the prior month, and the owner has met the requirements of section 5, subsection (c).

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

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

~~(de)~~ The livestock 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.

~~(32) 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. If a private citizen kills a gray wolf and does not comply with this rule, then that person may be prosecuted under applicable laws and regulations, including unlawful taking of endangered wildlife under RCW 77.15.120. The department will keep the attorney general apprised of any investigations into such violations.~~

(4) The department must publicly report all permits issued under this section within 24 hours of the issuance of the permit and must report all wolves killed under this section within 7 days of being notified by the livestock owner.

(35) In addition to the provisions of section (2), the director may authorize ~~additional removals by permit under the authority of RCW 77.12.240~~ agency lethal removal of wolves under the following circumstances.

(a) Within three months of the adoption of this rule, the department will draft a structured decision-making framework to be presented to the commission for approval, outlining the process for deciding whether to issue an order for the lethal removal of wolves. That framework shall be based on the best available science and shall be updated as new information or science becomes available, shall describe the process for making decisions on wolf lethal removal, and shall outline the circumstances under which the department may consider killing wolves, including objective assessments of the following factors:

(i) All the factors described in subsections (b) and (c);

(ii) For chronic conflict areas, all the factors described in section (7);

(iii) The characteristics of the land on which the predations occurred, including the type of terrain, and its proximity to core wolf areas;

(iv) The appropriateness of the nonlethal preventative measures taken to protect livestock, the timeframe during which they have been in place, and the effectiveness with which they were deployed;

(v) Any commonalities with prior predations, including but not limited to any commonalities in the producer, pack, or terrain;

(iv) Any alternatives to using lethal control, including potential cooperation with other governmental or non-governmental entities to address the wolf-livestock conflict; and

(v) Risks of potential lethal control to pack population, social structure, recruitment, and dispersal.

(b) The department has documented at least 3 qualifying wolf predations on private property within a 30-day period, at least two of which have resulted in the death of livestock.

(c)The director (or staff designee) may authorize lethal removal of wolves on private property in accordance with the department's structured decision-making framework if:

(i)The department determines wolf predations on the affected livestock producers are likely to continue during the same grazing season;

(ii) No attractant was a known factor in any of the qualifying wolf predations, including but not limited to any food or bait source, nearby carcasses or bone piles, unprotected sick or injured animals, and unprotected newborn calves under 200 pounds;

(iii) The livestock were legally present, and, in the case of grazing allotments, the livestock producer was in compliance with all permit requirements in the area where the predations occurred at the time when the predations occurred;

(iv) The livestock were not concentrated in close proximity to any known core wolf areas, including wolf den or rendezvous sites; were not being drawn to any core wolf areas by the presence of salt blocks or other attractants; and measures were in place to keep livestock away from any core wolf areas;

(v) Empirical and predictive data about Washington's wolf population and the wolf population in surrounding areas demonstrates that the lethal removal authorization will not harm the wolf population's ability to reach recovery objectives statewide or within individual wolf recovery regions, or reduce the probability of wolves persisting in the state;

(vi) Killing wolves will not orphan or jeopardize the survival of wolves under a year and a half;

(vii) The department received and reviewed all relevant data on the use of non-lethal practices used by department staff, contracted individuals and non-department entities, including the affected livestock producer; and

(viii) The director (or staff designee) determines that livestock owners who experienced the qualifying wolf predations have

implemented at least two proactive deterrence measures at least 14 days prior to at least two of the predations counted in subsection (b).

(d) At least 24 hours prior to implementing a lethal removal order for wolves, the department must publish on its public website: (1) notice of the lethal removal order; (2) the injury/mortality investigation reports on the wolf predations considered in issuing the order; (3) the district and regional reports given to the director containing staff recommendations on the lethal removal order; and (4) any additional findings made in support of the lethal removal order in accordance with the department's structured decision-making process.

(d) No lethal removal authorization may be in effect longer than 30 days.

(e) No more than one wolf may be killed under any single lethal removal order. The department may not kill wolves under six months of age.

(f) The department shall only kill wolves it reasonably believes were responsible for predation upon livestock.

(6) Conflict mitigation plan.

The director (or staff designee) will designate a geographic area (e.g., all or a portion of a wolf pack territory) as a chronic conflict area when one or more wolves have been killed or authorized to be killed in that area in two of the past three years through department-authorized removal, caught-in-the-act shootings, and/or poaching.

(a) For each designated chronic conflict area, staff will develop a 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 all feasible nonlethal deterrence measures that are appropriate for the chronic conflict area according to the best available science and professional judgment of staff, considering, but not limited to:

(i) Species and type of livestock;

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

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

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

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

(vi) Measures to avoid attractants for wolves;

(vii) Proximity to known or suspected core wolf areas including dens and rendezvous sites; and

(vii) Landscape characteristics.

(b)The department will complete its conflict mitigation plan by April of the year following the date when the geographic region qualified as a chronic conflict area and will post the completed plan on its website within 10 days of completion, with only those redactions required by law.

(c)The department staff will work with willing, affected livestock producers to assist them in implementing the nonlethal measures specified in the conflict mitigation plan.

(d)The department may revise or terminate conflict mitigation plans as appropriate to accommodate changes in the situation or the state of knowledge.

(7) Criteria for lethal removal of wolves in chronic conflict areas.

(a) The director (or staff designee) may authorize lethal removal of wolves on private lands in a chronic conflict area on a case-by-case basis if all the criteria of section (5) of this rule are met, and either:

(i) All affected producers have substantially complied with the material conditions and expectations in the applicable conflict mitigation plan; or

(ii) Wolf predations on livestock belonging to livestock producer(s) that have substantially complied with the material conditions and expectations of the conflict mitigation plan are sufficient to meet the standards in section 5, subsection b).

(b) If range riding is included as a component of the conflict mitigation plan, WDFW staff must establish the following before finding that a livestock producer has substantially complied with that provision:

(1) Range riders have taken both proactive and reactive actions to prevent livestock-wolf conflict, including relocating and bunching up cattle as necessary and appropriate, retrieving cattle that have strayed from the herd, and locating and removing sick, injured, or dead livestock.

(2) Range riders are carrying and using GPS-tracking units while performing their duties.

(3) Range riders have prepared daily logs detailing the date and number of hours spent in the field and observations of livestock and wolves and their behaviors, and WDFW staff have reviewed these logs and determined that the range rider activities met the expectations of the conflict mitigation plan.

(4) An adequate number of range riders were used to cover the territory, they were assigned to areas where they were needed to prevent wolf-livestock conflict, and they spent enough hours in the field to reasonably deter such conflict, including nighttime hours as appropriate.