

***Via Email and Certified Mail with Return Receipt Requested***

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**Re: Petition to amend the Washington Administrative Code to codify certain portions of the Washington Wolf Conservation and Management Plan**

On December 3, 2011, the Washington Fish and Wildlife Commission (“Commission”) approved the state’s Wolf Conservation and Management Plan (“Plan”). The Plan provides guidance to the Washington Department of Fish and Wildlife (“WDFW”) on a wide array of wolf management issues, including recovery, control, compensation, and delisting. The Plan is a far-reaching document assembled over several years and incorporates the views of literally thousands of stakeholders and scientists. It is central to the state’s efforts to recover wolves in Washington in a manner that minimizes conflicts, especially with commercial livestock operators, often opposed to recovery.

At this time, there are at least ten packs of wolves in Eastern Washington and the North Cascades, a number that has been steadily increasing. Wolves are immigrating from neighboring states and British Columbia, and successfully reproducing and spreading to new areas within the state. Tragically, one pack of wolves, the Wedge Pack, was destroyed by the State of Washington last year in response to allegations of depredation of livestock. The decision-making process and implementation of that action was fraught with controversy that still has repercussions today. To avoid such future controversies, to bring greater certainty, accountability, and transparency to wolf management in the future, and because various statutes, rules and the Plan itself all contemplate as much, the Commission should codify certain parts of the Plan into the Washington Administrative Code (“WAC”).

The Center for Biological Diversity, Cascadia Wildlands, Western Environmental Law Center, Gifford Pinchot Task Force, Kettle Range Conservation Group, The Lands Council and Wildlands Network (“Conservation Groups”), hereby petition the Commission and WDFW, under RCW § 34.05.330, to amend various sections of WAC Title 232, Chapter 36 to codify certain portions of the Wolf Conservation and Management Plan, as described below. Each of these groups has worked for years to restore and protect Washington wolves, and together represent tens of thousands of Washington citizens as members and supporters. This petition now initiates a process requiring a detailed response within 60 days upon receipt. RCW § 34.05.330(1). If this petition is denied at that time, the Conservation Groups will exercise their right to a review of this petition by the Governor for a final executive determination on the appropriateness of this request. § 34.05.330(3). We look forward to a timely response to this petition and remain available to answer questions and otherwise work constructively towards wolf recovery with WDFW throughout this process.

## **I. BACKGROUND HISTORY OF WOLVES IN WASHINGTON**

A devastatingly successful campaign to extirpate wolves in the United States, beginning at least as early as the 1600’s, was waged across the entire country well into the twentieth century. Though an estimated two million wolves once existed across North America, by the late nineteenth and early twentieth centuries, wolves had largely been driven to extinction in most of the Lower 48 States. Subsequent to this national policy of wolf eradication, the listing of the gray wolf (*Canis lupus*) under the federal Endangered Species Act in 1974 began to halt the extinction of the species. A small, extant population of wolves in Minnesota began to increase in number and expand in range to Michigan and Wisconsin. Wolves were reintroduced to Yellowstone National Park and central Idaho in 1995-1996, and this northern Rockies wolf population began to increase in size, expand in territory, and become a source population for dispersing wolves which, in the late 1990’s-early 2000’s, started heading west into Oregon and Washington. Wolves north of the border, in British Columbia, also gradually began to make their way into the State. By this time, the gray wolf had been added to Washington’s own state list of protected animals, as an endangered species. WAC 232-12-014.

Like elsewhere across the country, wolf populations that once had historically ranged across the state of Washington were extirpated through bounties, hunting, and government-sponsored predator-eradication campaigns to benefit a livestock industry that was unwilling to coexist with wolves. Robust populations of wolves had once occupied nearly all of Washington, but extreme persecution led to the near-extirpation of wolves from the State by the early 1900’s. Sightings of individual animals, pairs, and tracks, as well as reports of howl vocalizations, occasionally cropped up, generally in the Cascade Mountains and in some northeastern parts of Washington. In the absence of any evidence that Washington had a resident breeding population at the time, likely these were dispersing animals from British Columbia or other states. In 2002, a radio-collared female wolf from Montana who, along with her pups, had been relocated by federal agency staff to northern Idaho, crossed the border into northeastern Washington. She remained there for several weeks before disappearing north into British Columbia. This was the first confirmed instance of any wolves moving westward into Washington from the northern Rockies population of wolves, but it would not be the last, as lone wolf sightings in northeastern

Washington continued to be reported in the ensuing years. Breeding pairs and packs gradually formed and established territories, and as of March 2013, the state wildlife agency reported at least ten confirmed packs in Washington, with three confirmed in the North Cascades, and seven confirmed and two suspected packs in the northeastern part of the State. Washington's total wolf population is currently estimated at 51-101 animals.

#### **A. Development of the Washington Wolf Conservation and Management Plan.**

The gray wolf was classified as "endangered" under Washington law in 1980. WDFW regulations codified in 1990 required that WDFW prepare a recovery and management plan for the gray wolf by 1995. WAC 232-12-297 § 11.2.1. Despite this requirement, WDFW did not begin the recovery and management plan process for the gray wolf for seventeen years.

Finally, in 2007, WDFW initiated development of a draft Environmental Impact Statement and simultaneously convened a stakeholders group, representing diverse interests, to assist the agency in developing the Washington Wolf Conservation and Management Plan. The 17 members of the stakeholders group met regularly over 15 months to identify, discuss, negotiate and draft components of the Plan. The State also held 23 public scoping meetings plus official comment periods that generated more than 65,000 written comments submitted by members of the public. Drafts of the Plan were also peer-reviewed by 43 reviewers. In December of 2011, the Commission formally adopted the Plan. The Plan incorporates science as well as social and economic considerations, and represents five years of negotiated compromises arrived at by stakeholders whose views regarding wolves spanned the widest possible range. It also represents the views of the public, whose attitudes towards wolves, wolf conservation, and wolf management, were captured not only by the public scoping meetings and comment periods but also in two independent public opinion surveys (one conducted in 2008 by a professional research firm and the other conducted in 2009 by Colorado State University in collaboration with WDFW). According to these surveys, more than 74% of Washingtonians support the return of wolves to the State, view wolves as an important part of Washington's natural and cultural heritage, and wish to see wolves conserved and managed in ways that reflect those values.

#### **B. New trouble for wolves in Washington.**

From 2002 onward, and while the Plan development process was underway, more wolves dispersed into Washington from Idaho and British Columbia. In 2008, the State's first two packs since the 1930's were confirmed. Setting up their territory in Pend Oreille County in the northeastern part of the State, one pair, named the Diamond Pack, was first documented in 2008 and confirmed to have pups in 2009 and 2010. Simultaneously, confirmation was made of the Lookout Pack, which had a litter in 2008 and 2009 (and probably in 2007). Then, this sentinel pack of Washington's returning wolf population became the victim of a violent crime that went viral in media stories and shocked the conscience of wildlife aficionados across the nation. Three members of a family living near Twisp surreptitiously shot and killed nearly the entire pack, violating both state and federal endangered species protection laws and destroying the pack's structure. The crime was brought to light after the pelts of the dead wolves -- which the family was attempting to secretly mail through a private shipping company to a friend in Alberta -- leaked blood through the mailing boxes, alarming a shipping company employee, who then

alerted authorities. The killers were prosecuted, convicted, and ultimately sentenced to varying terms that included home detention, combined fines of \$50,000 to state and federal agencies, and forfeiture of the gun used to kill the wolves. This horrific incident raised awareness of the need to have a state wolf plan that would ensure the recovery and conservation of this species against a backdrop of the not uncommon attitude that the only good wolf is a dead wolf.

In the fall of 2012, the Plan and WDFW were put to the test when a pack in northeastern Washington, the Wedge Pack, was implicated in livestock conflicts and was ultimately eradicated by marksmen in helicopters following through on an order by WDFW to kill the entire pack. The Wedge Pack, which is believed to have had eight members, was first documented in July of 2012, becoming Washington's eighth confirmed pack since 2008. The Wedge Pack's range included an area in northern Stevens County that is bordered by Canada and the Columbia and Kettle rivers, creating a wedge-shaped territory from which the name is derived. Beginning in July, and continuing into August, both WDFW and a rancher who had lost livestock attributed livestock losses in this area to the Wedge Pack, despite conflicting opinions given to WDFW by different experts as to whether the initial livestock injuries and deaths were in fact caused by wolves.

Largely ignoring the requirements of the Plan, WDFW killed one pack member in early August 2012 and, after livestock injuries and deaths continued, over a three-day period in September 2012, the agency killed the six remaining locatable members of the pack, including the alpha male and female. During the months these events took place, the owner of the livestock in question had refused to cooperate in implementing adequate nonlethal conflict-prevention measures, as required by the Plan, and in public statements to the media, made clear his disdain for wolves, government agencies, and conservation efforts.

Conservation groups who were stakeholders in developing the Plan, and members of the public who had supported the Plan, became increasingly concerned as it became clear that the Plan's emphasis on the use of nonlethal methods to prevent and resolve wolf-livestock conflicts was being thwarted, and that the agency's decisions were not well-founded. In late August 2012, several conservation groups sent a letter expressing their concerns to WDFW Director Anderson, pointing out the requirements of the Plan that WDFW had not met prior to employing lethal control to manage wolf-livestock conflict related to the Wedge Pack. WDFW never responded to this letter.

In late August 2012, Senator Kevin Ranker, the Chair of the Washington State Senate Committee on Energy, Natural Resources and Marine Waters, sent a letter of inquiry to WDFW while the Wedge Pack scenario was unfolding, stating that "[w]hen it comes to the serious action of lethally removing state-endangered wolves, straying from the Plan's very specific intent will only heighten controversy and ultimately delay wolf recovery and delisting." Yet, regardless of the rancher's refusal to cooperate, and the conflicting expert opinions over the causes of the livestock losses, the agency elected to kill the entire pack, resulting in a firestorm of public controversy. An investigation of WDFW's handling of the matter was then called for by Senator Ranker, who termed WDFW's decision to kill the Wedge pack "a serious failure."

The fate of Washington's wolves now rests with the State and, at least for the time being, partially with the federal government. In 2011, federal protections for wolves in the eastern third of Washington were removed. The western two-thirds of Washington currently retain federal protections, but the U.S. Fish and Wildlife Service recently announced a proposed rule to remove protections for wolves in most of the Lower 48 States, including the remaining part of Washington. For wolves in Washington, this would leave only two measures of protection – their continued listing as endangered under the State's own list of protected species, and the provisions of the Plan.

The reestablishment of wolves in Washington is in its infancy and the population exists at numbers of magnitude lower than historical wolf numbers in the State. While current human population density, development, and road density would not permit the state wolf population to again exist at historic numbers or to occupy all places wolves once lived, at this time, the species needs ongoing, adequate protections and certainty in management actions to recover and to conserve a sustainable wolf population here.

## **II. WOLF ECOLOGY, STATUS, AND IMPORTANT ECOLOGICAL ROLE**

The role of wolves as apex predators in the ecosystems where they live is well-documented in the scientific literature. Wolves are highly interactive with their environments, have direct and indirect effects on multiple animal and plant species, and promote biodiversity in those environments.

Ongoing studies of wolf populations show that, as their chief diet, wolves prefer wild ungulates (e.g., deer and elk, primarily, but also bison, moose and other region-specific species). As coursing predators who test their prey for vulnerability, wolves tend to select prey animals that are older, young, injured, sick or less fit in some way (Halfpenney 2003, Mech 1970, Stahler et al. 2006)<sup>1</sup>. This thinning of less healthy and non-reproductive age animals leaves more forage available for the prime-age, reproductive members of the herd, and may contribute to a reduced prevalence of chronic wasting disease in wild ungulates (Wild et al. 2005). By no means the efficient "killing machines" that folk tales make them out to be, in the majority of their hunts, wolves are, in fact, unsuccessful. Yet, the mere presence of wolves may result in increased wariness and altered behavior by prey animals (Pyare and Berger 2003). This, in turn, has trickle-down effects on the vegetation browsed by these prey animals, with cascading effects to other species.

Interactions by wolves with their natural prey species, such as deer and elk, can result in decreased over-browsing of vegetation, allowing plant re-growth that will support nesting sites for birds, soil erosion control along riparian banks, and building materials for beavers whose dams then result in cool deep ponds that benefit fish and other species (Ripple and Beschta 2004; Hebblewhite et al. 2005). Wolves also put food on the ground for other species. Wolf-killed elk carcasses in Yellowstone National Park have been observed to be visited by multiple scavenger species ranging from coyotes, bears, and eagles, to magpies, ravens, and even hundreds of species of beetles (Smith et al. 2003, Wilmers et al. 2003).

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<sup>1</sup> Scientific literature citations from this section can be found at the end of this petition.

The effect of wolf presence on other, smaller predators also has ripple effects. Wolves view coyotes as territorial competitors and frequently kill coyotes within their range. Upon the wolf's restoration to Yellowstone, wolves killed 50% of the coyotes in the northern Range of the Park and up to 90% of the coyotes in core, wolf-occupied areas (Crabtree and Sheldon 1999, Smith, et al. 2003). This decrease in the coyote population resulted in higher survival rates for the fawns of pronghorn antelope, which had previously suffered high mortality due to coyote predation (Smith et al. 2003). The reduced coyote population could lead to increases in the populations of other, mid-size carnivores, like fox, which compete more closely with coyotes.

These ecological effects of wolves are the result of vital relationships and processes in healthy, functioning ecosystems. The critical role of apex predators in general has been demonstrated in both terrestrial and marine ecosystems. Apex predators fill an essential niche that cannot be replicated by other species within the food webs in which they have evolved over millions of years. However, around the globe, apex predators' numbers have been vastly reduced by human activities -- including outright campaigns to eradicate such predators in many places, as was done with wolves in North America. As a result, scientists are noting that, globally, conservation measures must include the protection of habitat sufficient to ensure the existence of healthy, sustainable populations of apex predators. (Estes et al. 2011).

In the Lower 48 States, though recovery efforts for the gray wolf have been made by the federal government in a small handful of locations, today the species exists at only one percent of its historical numbers, living in only five percent of its historical range. While changes on the landscape have occurred over time, there are still regions in the U.S. that have good habit for wolves and Washington is one of those places.

Washington's ecosystems deserve to benefit from a recovered wolf population, at ecologically effective population numbers and distribution. The fact that wolves are returning to Washington results in an opportunity for the State to ensure they are recovered and conserved, as intended by the Plan.

### **III. WOLF-LIVESTOCK CONFLICTS AND THE CRITICAL ROLE OF NON-LETHAL MANGEMENT TOOLS**

While wolves rarely prey on livestock, wolf-livestock conflicts do occur and, at times, result in losses to livestock producers. The Plan considered this issue seriously and thoughtfully and a substantial amount of the Plan addresses concerns expressed by livestock-producer stakeholders. It does so by explicitly providing information about wolf depredations on livestock, the background of management measures available for reducing wolf depredations, background on wolf compensation programs in other states, an analysis of predicted livestock losses in Washington due to wolves, a description of management tools to be used for managing wolf-livestock conflicts in Washington, steps to expand the use of proactive/nonlethal measures for reducing conflicts in Washington, and a recommended compensation program for wolf-caused losses in Washington. Plan at 72.

The Plan also acknowledges that the primary cause for the rapid decline of wolf populations in Washington during the last half of the nineteenth century “was the killing of wolves by European-American settlers as ranching and farming activities expanded” and that “[h]uman-caused mortality, particularly illegal killing and legal control actions to resolve conflicts, is the largest source of mortality for the species in the northwestern United States and illegal killing has already been documented in Washington.” Plan at 8. In its discussion of the efficacy of killing wolves to resolve wolf-livestock conflicts, the Plan notes that “[t]wo recent analyses of long-term lethal control of wolves found that removals generally have limited or no effect in reducing the recurrence of depredation (Harper et al. 2008, Muhly et al. 2010a),” that “excessive levels of lethal removal can preclude the recovery of wolf populations, as noted with the Mexican gray wolf in New Mexico and Arizona (USFWS 2005),” and that to minimize negative impacts on recolonizing wolf populations, “constraints on lethal control have recently been recommended by Brainerd et al. 2008. . . .” Plan at 81. Finally, the Plan acknowledges that “managers should assess the potential negative impacts of wolf removal on pack structure and persistence and the potential for creating unstable pack dynamics if sink habitats are created by depredation control, especially in recovering populations (Gehering et al. 2003).” Plan at 81.

During the nearly 20 years that have elapsed since wolves were reintroduced to the northern Rockies, because of the on-the-ground efforts of non-governmental organizations (“NGOs”) and ranchers and agencies working collaboratively, there has been a substantial increase in awareness regarding the availability and effectiveness of non-lethal, wolf-livestock conflict-prevention and conflict-reduction strategies and tools. Though predator conflict-management practices of the past routinely resorted to simply killing predators – which, in the case of wolves, resulted in their near-extinction in this country – evolving understanding, views, values, and scientific evidence point to solutions that are instead proactive and nonlethal. The Plan acknowledges these modern understandings and is emphatic that nonlethal methods will be the first choice for conflict-prevention and resolution: “Non-lethal management techniques will be emphasized throughout the recovery period and beyond.” Plan at 85.

Many of the most basic conflict-prevention tools and strategies are common-sense solutions and have been used in other parts of the world where humans have been raising livestock in close proximity to wolves for centuries:

- Human presence is one of the most effective measures. This means having range riders out with the livestock herds, on the open range, on a consistent basis, rather than simply turning cattle or sheep loose for a grazing season and then returning weeks or months later to check on these animals. Human presence provides the opportunity to be watchful for predators and haze them away. It allows ranchers to know immediately whether any of the herd is sick or injured and thus more vulnerable to attack by wolves or other predators, and whether those animals should therefore be removed preventatively to safety and for veterinary treatment. And it enables livestock to be kept bunched up by the range riders, reducing the vulnerability of individual animals.
- Removing attractants, such as carcasses or bone piles of dead livestock or injured or sick livestock that draw in predators and scavengers, is a common-sense solution. Removing, burning, or deeply burying bone piles gets rid of an attractant that could otherwise draw

predators in to closer proximity of live cattle and sheep. In Oregon, when agency staff detected that radio-collared wolves were frequenting certain locations and the agency showed the locations on a map to local ranchers, the ranchers said those spots were all places that bone piles had been accumulating. The agency worked with ranchers to get those attractants removed or buried, and the wolves stopped visiting those locations.

- Using guard dogs in the herds to alert herders, range riders and the livestock operators to the presence of wolves provides an early warning system. In response to the dogs' barking, humans can step in and take measures to haze wolves away. A number of dog breeds from European countries have been used in the U.S. for this purpose, including Great White Pyrenees, Maremmas from Italy, and the Akbash which originates from western Turkey. Other dog breeds are being tested for their effectiveness, as well.
- During lambing and calving season, fencing with night pens provides a protective barrier. Fencing can also be fortified with a scare device that consists of simple strips of flagging hung at intervals along the fenceline. An import from its use in Poland, "fladry," as it is called, provides a psychological barrier that wolves are loathe to cross, and can be effective for a month or more at a time. If the fence on which the fladry has been fastened is an electric fence, this so-called "turbo-fladry" provides an extra layer of protection; as wolves gradually get used to the flagging and attempt to go through the fence, they will get zapped with enough electricity to frighten them off.
- Another scare device is effective with wolves that are wearing radio-collars and is called the radio-activated guard box, or "RAG-box." This is a small box which can be attached to a fence-line, and inside the box is an electronic detection system that is triggered by the radio-frequency of an approaching radio-collared wolf. The detection system can be set to trigger when a wolf comes within a certain distance. When the system goes off, its attached sound-system speakers ring out with the pre-recorded sounds of explosives, helicopters, canons, alarms and other frightening noises. The loud sounds scare wolves away. The detection equipment also serves as a data collector because it records which radio-collared wolf set it off, what time the wolf arrived, and whether that same wolf made any other attempts to return.
- Other effective strategies involve specific animal husbandry practices and deliberate breed choices. In some locations, ranchers have aimed at creating a "birth pulse," that is, coordinating their breeding and birthing periods so that there is only one pulse of time in which there are young, more vulnerable animals on the landscape instead of having a constantly ongoing birthing period over several months or year-round. Some livestock operators are experimenting with different breeds of cattle that are larger and/or more aggressive in protecting themselves and their calves.
- Having alternate grazing allotment options has proven extremely effective. In the southwestern U.S., where attempts to recover Mexican gray wolves are under way, federal agencies have helped identify alternative grazing allotments, if the allotment normally used by a livestock producer happens to be where a wolf pack decided to den that season. There, and in the northern Rockies, agencies, NGOs, and ranchers have also

worked together to keep cattle in certain locations longer, provide them with supplemental hay, and wait to move them onto an allotment until after denning wolf pups have gotten old enough that their parents have relocated them to a rendezvous site elsewhere.

- In addition to the methods and strategies described here, new innovations are being developed and tested on an ongoing basis in collaborative efforts and at individual livestock operations in different states.

In locations where humans, livestock and wolves are sharing the landscape, experience indicates that using several of these methods and tools in combination is most effective. Which ones will work best in any given circumstance is case-specific, though some general principles of effectiveness of one type over another are also being identified. For instance, vast open range versus smaller acreage, or whether the livestock in question are cattle versus sheep can affect utility.

In Washington, all of these nonlethal strategies and tools can and should be used before, if ever, resorting to killing wolves to prevent or to resolve conflicts. Modern-day research supports this conclusion. The majority of the public expects state agencies to keep up with evolving science and understanding about animal behavior and the ecologically-valuable role of apex predators like wolves, as well as values that emphasize stewardship of other species with which we share the planet. Just as importantly, the Plan that was carefully crafted over a five-year process with substantial public involvement supports this approach.

#### **IV. A CODIFIED RULE IS REQUIRED TO PROPERLY IMPLEMENT THE PLAN**

While the development of the Wolf Conservation and Management Plan represents a significant advancement for wolf management in the state, a further, logical step is needed. In fact, for numerous reasons described below, the codification of certain sections of the Plan into the WAC is now required.

##### **A. Long-standing policy should be converted to rules.**

After years of effort, and with the input of literally thousands of citizens and scientists, the Plan is the state's definitive policy statement on wolf conservation and management. The Plan acknowledges that wolf recovery and attainment of the Plan's ultimate goals could take decades. As a policy statement, the Plan at this time is arguably no more than advisory. RCW § 34.05.230(1). However, the legislature has encouraged agencies to convert long-standing policy statements into rules. *Id.* In fact, the legislature has given citizens the right to petition for the conversion of policy statements like the Plan into codified rules. § 34.05.230(2). Although the Conservation Groups are instead petitioning here for an amendment of rules under a different section of the Revised Code, § 34.05.230 is strong evidence that granting this petition to codify a plan that may be in effect for decades would be in keeping with the expressed will of the legislature.

**B. A rule will provide all stakeholders and WDFW with greater certainty.**

Businesses, including commercial livestock operators, function best in an environment where they can plan with certainty on future conditions and not be surprised by unexpected government decisions. Likewise, effective relations between state agencies and conservation organizations are most effective when characterized by the certainty of rules, rather than the uncertainty of litigation. Approval of the Plan has increased stakeholders' certainty around wolf conservation and management in the state, but more is needed and readily possible.

The Plan is written in often broad terms and for the broadest possible audience. The kind of rigor necessary around defining terms and laying out rights and responsibilities is often not as great when crafting policy as it is when defining a codified rule. While the Plan is helpful in predicting how WDFW will respond to future situations, the precision of a codified rule will be even more helpful. With codified rules, commercial livestock operators, conservation organizations, and regular citizens will all know with much greater certainty when and how the agency will react to a variety of situations, and with that certainty, effective planning will increase, and conflict and distrust will decrease.

Of course, the flexibility of an adaptive management approach can be useful when approaching novel situations like wolf management in Washington. The Plan contemplates as much. *See* Plan at 133-35, 153, and 159. An adaptive management process and codified rules need not be at cross purposes. This petition only seeks to codify certain core elements of the Plan. Even when codified, extensive flexibility in management approaches will be left to the agency. Second, anything codified can be amended. Because amendment of rules requires notice to and affords input from the public, the amendment process tempers the loss of certainty that would be experienced through the rule making process as compared to overnight changes to the Plan that might be made by mere agency fiat.<sup>2</sup> Finally, governing by temporary, emergency rule, as has been practiced thus far, does little to establish certainty for stakeholders. To increase certainty for all stakeholders and for the agency, elements of the Plan as described below should be codified through the regular rule making process.

**C. A rule will make the WDFW more accountable to all stakeholders.**

The essence of good government is accountability to citizens, voters, and taxpayers. The agency recognized this when reaching out to a wide range of stakeholders to develop the Plan. However, all of that work could be undone with a single, unilateral change to the Plan by the agency. While developed through a process that was accountable to the public, there is nothing about the Plan that assures that it remains accountable in the future. Without a rule, the Plan perhaps remains no more than a set of agency promises, and stakeholders have little recourse to assure that those promises are kept. In fact, WDFW Director Anderson publicly stated at the August 31, 2013 Commission meeting that the Plan is not legally enforceable and can be changed at will with merely a note to the file.

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<sup>2</sup> It should be noted, however, that certain types of changes to the Plan might need to be evaluated under the state Environmental Policy Act.

A codified rule presents a very different situation. The codification process requires that notice be given to the public, as well as the opportunity to provide comment to the agency on proposed rules. Once codified, everyone knows the rules precisely and has assurances that the agency must act accordingly. Changes to rules require a similar notice and comment process. This no-surprises system helps to proactively avoid the controversy that can arise when policy is suddenly interpreted and implemented in a fashion that is not accountable to stakeholders. It is far less controversial, and far less damaging to public acceptance of agency actions to recover and manage wolves, to argue over the development of rules in a public process, rather than to fight over the interpretation of broadly worded policy guidance in the heat of implementing a difficult agency decision. To increase accountability of the agency to all stakeholders, certain elements of the Plan should be codified as described below.

**D. A rule will provide all stakeholders with greater transparency.**

It is a simple proposition that government decisions made in the open achieve wider acceptance and success than government decisions made behind closed doors. The Plan was a significant step in this direction. Codification of parts of the Plan would represent a further, significant step.

A codified rule would make key definitions central to Plan implementation clearer to the public. Likewise, key steps and processes in implementation of the Plan would be more clearly laid out to the public in a codified rule. Any change in the codified portions of the Plan would have to go through the notice-and-comment process, assuring that future changes to wolf management policy are also made in a transparent, public process.

When government decisions and their basis are transparent, controversy can be avoided. It is a far better approach to make the basis for a decision public before that decision is made rather than to litigate over it after. Because of the transparency it would provide, certain sections of the Plan should be codified.

**E. The Plan itself contemplates amendment of the WAC as part of its implementation.**

The Plan considers the use of regulation as one of the means that may be necessary to accomplish Plan goals. Plan at 14. The Plan also states:

Portions of the wolf compensation program in this plan are inconsistent with state laws (RCW 77.36 and WAC 232-36). Inconsistencies include different payment levels, different definitions of livestock and eligible recipients, and coverage for unknown losses. In order to implement the plan's recommended compensation program using state funds, WAC 232-36 may need to be amended.

Plan at 94. This makes clear that the drafters of the Plan themselves, and the Commission in approving the Plan, contemplated that amendment of the WAC would be necessary to fully implement the Plan. The section of the WAC that needs to be amended is the same section identified in this petition. This is yet another reason to do so.

**F. The Plan includes seemingly binding requirements that might remain unenforceable until codified.**

As noted above, the Plan is arguably an unenforceable advisory document subject to revision at any time. *See* RCW § 34.05.230(1). Nonetheless, the Plan is written as if it is an enforceable document. For example, the first paragraph of the Executive summary of the Plan says, “When approved, the state wolf plan will apply statewide.” Plan at 8. This is not correct. If no more than guidance, the Plan does not “apply” at all, because WDFW is not required to follow the Plan. In a section entitled “Time Requirements,” the Plan suggests that “objectives in this plan must be maintained for 3 consecutive years.” Plan at 59. Again, this would not be correct. The agency could change the three-year “requirement” at any time, or simply choose to ignore it. This is true of nearly every aspect of the Plan. The definition of a confirmed wolf depredation could change at any time. The agency could choose not to monitor wolves, or refrain from writing an annual report. If investigators consistently initiated investigations well after the required 48 hours limit, there might be no legal repercussions and no avenue to compel the agency to follow the requirements outlined in the Plan. This list could go on and on.

While the Plan is written as if it is a document that, once approved, binds the agency, that is not necessarily true. Key elements of the Plan should be codified to assure that requirements truly are binding and enforceable.

**G. Implementation of certain actions contemplated in the Plan will not be legal unless codified.**

The Plan contemplates various circumstances in which lethal control of wolves would be used as a management tool. However, as currently written the statutes and regulations provide no legal authority to exercise lethal control for most and perhaps all circumstances contemplated.

RCW § 77.12.240 allows WDFW to “authorize the removal or killing of wildlife that is destroying or injuring property, or when it is necessary for wildlife management . . . .” This broad authority applies to wildlife in general. Arguably, under this authority, WDFW would be able to authorize itself or others, for example, commercial livestock operators, to kill wildlife generally. The legislature, however, has made clear that no person may kill a state-listed endangered species, except as “authorized by rule of the Commission.” RCW § 77.15.120. Despite WDFW’s broad authority to authorize the killing of wildlife generally, Title 77 contains a specific prescription against killing endangered wildlife, except where authorized by rule. Only two such rules have been authorized by the Commission.<sup>3</sup>

The first is for the personal safety of people immediately threatened. “It is permissible to kill wild animals engaged in the physical act of attacking a person [or] game animals posing an immediate threat of physical harm to a person.” WAC 232-36-050. Wolves are wild but not

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<sup>3</sup> A third rule has been temporarily authorized by the Commission using its emergency authority. *See* WAC 232-36-051B. That rule expires on or around August 24, 2013. *See* RCW § 34.05.350(2).

game animals, and therefore may be killed if engaged in the physical act of attacking a person, but not for merely posing an immediate threat of physical harm.

The only other rule authorized by the Commission for killing endangered species, as required by RCW § 77.15.120, concerns killing wildlife causing property damage. *See* WAC 232-36-051. The killing of wildlife as authorized by this rule is limited specifically to private property damage of commercial crops or commercial livestock by wildlife. WAC 232-36-051(1). The rule cites to RCW § 77.36.030 for its statutory authority. That statute pertains exclusively to the killing of wildlife by “the owner, the owner’s immediate family member, the owner’s documented employee, or a tenant of real property . . . .” RCW § 77.36.030(1). This statute, and any rules that derive authority from this statute, pertain only to the killing of wildlife by land owners and related individuals to address losses of their private property to wildlife.<sup>4</sup> This in turn means that the only rule authorized by the Commission to kill endangered wildlife to address property damage, does not include authorization for WDFW to kill wildlife for that purpose. Any rule deriving its authority from RCW § 77.36.030 could not have done otherwise.

To summarize, the legislature has presumably given WDFW broad authority to kill wildlife that is destroying property. RCW § 77.12.240. But WDFW can only kill endangered wildlife when authorized by rule of the Commission. RCW § 77.36.030. The Commission has authorized the killing of endangered wildlife by anyone when that wildlife is in the physical act of attacking a person. WAC 232-36-050. And the Commission has authorized WDFW to give permission to land owners and related individuals to kill wildlife when that wildlife has damaged their commercial crops or livestock. WAC 232-36-051. The Commission has never authorized WDFW to kill endangered wildlife, including wolves, to address the problem of property damage. For this reason, rule making is necessary to implement that portion of the Plan.

Arguably, as currently structured the Commission has not yet effectively adopted a rule that can legally authorize the killing of wolves even by landowners to address property damage. Looking again to the statute, first, any rule allowing land owners to kill wolves to address property damage must “take into consideration the recommendations of the Washington state wolf conservation and management plan.” RCW § 77.36.030(3). Second, wildlife cannot be killed by land owners to address property damage unless the rule authorizing such killing includes “[a]ppropriate protection for threatened and endangered species . . . .” RCW § 77.36.030(2)(a).

The Commission has never taken the Plan into consideration in writing the only rule allowing property owners to kill state-listed wildlife. The Commission has only amended WAC 232-36-051 once since the Plan was adopted by the Commission, and those amendments did not include any consideration of the Plan. *See* Department of Fish and Wildlife Order 13-19, February 6, 2013, at Washington State Register 13-05-003. Next, the rule contains no appropriate protections for endangered species, as required by RCW § 77.36.030(2)(a). The rule contains a minimal set

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<sup>4</sup> The rule authorizes WDFW to grant permits conditioned on, among other things, “the preventive methods employed by the person prior to the damage event.” WAC 232-36-051. This suggests that the Commission also understood that the authority granted under RCW § 77.36.030 to write rules for the killing of endangered wildlife damaging property pertained only to land owners and related individuals to address losses to their private property from wildlife.

of permit requirements for taking wildlife generally. WAC 232-36-051(1)(a)(v). But the only protections for endangered species are federal protections which do not even apply in the eastern third of the state and would not apply if federal protections are lifted state-wide as has been proposed. Therefore, there are no appropriate protections for threatened and endangered species. For both of these reasons then, the rule authorized by the Commission purporting to allow WDFW to permit land owners to kill wolves to address property damage is outside the authority granted to the Commission by the legislature under RCW § 77.36.030. Permits written under this rule are illegal.

Lastly, wild ungulates are not commercial livestock and are not private property. Again, despite the broad authority granted WDFW under RCW § 77.12.240, endangered species may be killed only when “authorized by rule of the commission.” RCW § 77.15.120. There is no rule authorizing the killing of wolves to manage wild ungulate populations. As such, there is no authority to kill wolves for the protection of at-risk wild ungulate populations. Because the legislature has instructed it to, and because key sections of the Wolf Conservation and Management Plan cannot be implemented without doing so, certain portions of the Plan, described below, should be codified through rule making.

## **V. THE PLAN AND THE SECTIONS THAT SHOULD BE CODIFIED**

The Plan is a comprehensive document on the topic of wolves in Washington. In addition to conservation and management requirements and tasks, there is a great deal of information on history, science, and on similar programs in other states. It is neither necessary nor beneficial to codify all of this extra material. In addition, it is not necessary to codify every aspect of the Plan’s management approach, as flexibility in implementation should undoubtedly be left to the agency.

This petition only seeks to codify key sections of the Plan. The Conservation Groups are petitioning for the codification of the following sections: key definitions; monitoring, reporting and outreach; recovery objectives; translocation; investigations; lethal control; at-risk ungulate populations; and compensation.

Specific draft amendment language is included below. It is largely taken directly from the Plan itself, with minimal changes included only where necessary. The Conservation Groups take no stance on exactly which sections of WAC Title 232, Chapter 36 need to be amended to best implement the Plan through rule making. Amendments will likely be needed, at least, in Section 030 – Definitions, Section 040 -- Wildlife/human interaction and conflict resolution for private property damage, Section 051 -- Killing wildlife causing private property damage, and Section 200 -- Payment for commercial livestock damage – Limitations. In addition, it may be necessary to amend Chapter 36 by adding one or more additional sections.

## **VI. PROPOSED DRAFT AMENDMENTS**

Conservation Groups are petitioning to have WAC Title 232, Chapter 36 amended to include the following language, largely drawn from the Washington Wolf Conservation and Management Plan.

## **A. Definitions**

“At-risk ungulate population” means any population of federal or state listed ungulate species including but not limited to Selkirk Mountain woodland caribou and Columbian white-tailed deer; and also including any ungulate population which falls 25% below its population objective for two consecutive years, and any ungulate population whose harvest levels decrease by 25% below the 10-year average harvest rate for two consecutive years.

“Current market value” means the value of an animal at the time it would have normally gone to market. Appropriate documentation, such as a contract, previous sales record, or current market reports, will be required to help determine this value.

“In the act of attacking” means actively biting, wounding, or killing.

“Recovery region” means one of three recovery regions denominated as the Eastern Washington region, the North Cascades region, and the Southern Cascades and Northwest Coast region. The western boundary of the Eastern Washington region follows Highways 97, from the British Columbia border south to Monse, 17, and 395, from Mesa south to the Oregon border, and matches the line used by the U.S. Fish and Wildlife Service to demarcate the western edge of the Northern Rocky Mountain distinct population segment for gray wolves in Washington. The boundary between the Northern Cascades region and the Southern Cascades and Northwest Coast region is Interstate 90 and county borders, such that San Juan and Island Counties are located in the North Cascades region.

“Successful breeding pair of wolves” means an adult male and an adult female with at least two pups surviving to December 31 in a given year.

## **B. Monitoring, reporting and outreach**

To assure the information necessary for effective recovery of wolves in Washington, WDFW shall develop and implement a program to monitor the population status, trends, and conservation and management needs of wolves in Washington. Howling surveys, monitoring of radio-collared individuals, and other methods will be used to determine whether wolves are successfully dispersing to new areas of the state and whether sufficient numbers of wolves exist in a recovery region to be used as a source for translocation.

WDFW shall publish an annual report with monitoring results, including status, trends, distribution, and other population parameters for wolves each year, and assess progress toward meeting recovery objectives. The annual report shall include the number of successful breeding pairs of wolves in Washington. Verification of successful breeding pairs will be done by WDFW using established protocols. To avoid double counting successful breeding pairs of wolves, packs with territories straddling recovery region or state boundaries will be counted in the area where the den site is located. If the den location is not known with certainty, then other criteria including the amount of time, percent of territory, or number of wolf reports in a recovery region

will be used to determine pack residency. No pack shall be counted in more than one recovery region in the state.

WDFW shall provide landowners whose land includes one or more den sites information on the locations of den sites, the timing and duration of denning, and how to avoid disturbance of den sites.

WDFW shall use hunting, fishing, and trapping regulation pamphlets and other means to provide educational messages and identification materials about wolves, including how to avoid accidental shooting during legal hunting seasons.

### **C. Down-listing and delisting objectives**

The gray wolf will be considered for down-listing from state endangered to threatened status when at least six successful breeding pairs are present for three consecutive years, with at least two successful breeding pairs for three consecutive years in each of the three recovery regions.

The gray wolf will be considered for down-listing from state threatened to sensitive status when at least twelve successful breeding pairs are present for three consecutive years, with at least four successful breeding pairs for three consecutive years in each of the recovery regions.

The gray wolf will be considered for delisting from state sensitive status when either: 1) at least fifteen successful breeding pairs are present for three consecutive years, with at least four successful breeding pairs for three consecutive years in each of the recovery regions; or 2) at least 18 successful breeding pairs are present with at least four successful breeding pairs in each of the recovery regions.

### **D. Translocation of wolves**

Wolves may be translocated for the following reasons only.

- 1) If genetic research determines that an isolated wolf population has reduced genetic diversity, an individual wolf from another population or pack may be moved into the population to increase genetic diversity in an effort to increase population viability. This activity would be conducted solely to facilitate genetic exchange with other populations in the state.
- 2) When one recovery region has exceeded its delisting requirements by at least one successful breeding pair, while another recovery region remains completely unoccupied by wolves, an evaluation of translocation efforts could begin. Wolves would only be translocated out of a recovery region if that region exceeds delisting objectives at the time of removal and removal would not cause the region's population to fall below its delisting objectives.

Before translocation, a feasibility assessment shall be performed to determine if sufficient suitable habitat and prey are available to support wolves at potential translocation sites in the recipient region, and to ensure that removal of wolves from the source region would not cause it to fall below delisting objectives. If all of these conditions were met, an implementation plan

would be prepared, which would provide detailed information on translocation methods and the selection of one or more release sites. A final proposed decision on translocation would include consideration of genetics in selecting the source population.

Before a final decision on translocation is made, a public review process shall be conducted to evaluate the translocation proposal. If the proposed translocation site is on federal land, the review process would be conducted under the National Environmental Policy Act (NEPA); if the proposed translocation site is on non-federal land, the State Environmental Policy Act (SEPA) process would be used. WDFW biologists shall coordinate with other land management agencies to determine a suitable location to release wolves.

3) Translocation can be used in lieu of lethal control to address commercial livestock losses or to protect at-risk ungulate populations on a case-by-case basis.

#### **E. Investigations of complaints of wolf depredation on commercial livestock**

Upon complaint by a commercial livestock operator of a possible attack of a wolf on that operator's livestock, WDFW shall conduct an investigation within 48 hours of receiving the report, led by personnel trained in depredation investigation techniques. After an investigation is completed, the complaint will be classified under one of the following categories:

1. Confirmed Wolf Depredation – There is reasonable physical evidence that the dead or injured animal was actually attacked or killed by a wolf. Primary confirmation would ordinarily be the presence of bite marks and associated subcutaneous hemorrhaging and tissue damage, indicating that the attack occurred while the victim was alive, as opposed to simply feeding on an already dead animal. Spacing between canine tooth punctures, feeding pattern on the carcass, fresh tracks, scat, hairs rubbed off on fences or brush, or eyewitness accounts of the attack may help identify the specific species or individual responsible for the depredation. Predation might also be confirmed in the absence of bite marks and associated hemorrhaging (i.e., if much of the carcass has already been consumed by the predator or scavengers) if there is other physical evidence to confirm predation on the live animal. This might include evidence of an attack or struggle. There may also be nearby remains of other victims for which there is still sufficient evidence to confirm predation, allowing reasonable inference of confirmed predation on an animal that has been largely consumed.

2. Probable Wolf Depredation – There is sufficient evidence to suggest that the cause of death was depredation, but not enough to clearly confirm that the depredation was caused by a wolf. A number of other factors will help in reaching a conclusion, such as (1) any recently confirmed predation by wolves in the same or nearby area, and (2) any evidence (e.g., telemetry monitoring data, sightings, howling, fresh tracks, etc.) to suggest that wolves may have been in the area when the depredation occurred. All of these factors and possibly others would be considered in the investigator's best professional judgment.

3. Confirmed Non-Wild Wolf Depredation – There is clear evidence that the depredation was caused by another species (coyote, black bear, cougar, bobcat, domestic dog), a wolf hybrid, or a pet wolf.

4. Unconfirmed Depredation – Any depredation where the predator responsible cannot be determined.

5. Non-Depredation – There is clear evidence that the animal died from or was injured by something other than a predator (e.g. disease, inclement weather, or poisonous plants). This determination may be made even in instances where the carcass was subsequently scavenged by wolves.

6. Unconfirmed Cause of Death – There is no clear evidence as to what caused the death of the animal.

#### **F. Avoiding wolf-livestock conflicts and lethal control**

The Washington Wolf Conservation and Management Plan finds that the best solution for limiting livestock losses is the implementation of proactive deterrents such as fladry, hazing, radio-activated guard devices, electric fences, guarding and herding animals, and other measures to protect against wolf-livestock conflicts. Such an approach may be particularly effective in Washington. In contrast, the Plan finds lethal control can preclude the recovery of wolf populations. Therefore:

WDFW shall endeavor to provide commercial livestock operators with training and assistance in the use of proactive, non-lethal management tools to avoid wolf-livestock conflicts.

WDFW shall provide commercial livestock operators with information on wolf locations for the purposes of minimizing wolf-livestock conflicts.

Consistent with federal law, a commercial livestock operator may utilize non-injurious harassment techniques to avoid wolf-livestock conflicts.

Consistent with federal law, WDFW may issue a commercial livestock operator a permit to utilize non-lethal injurious harassment techniques to avoid wolf-livestock conflicts. If, during the time wolves are listed as a state endangered species, such techniques are used inappropriately, or if a wolf dies as a result of the use of non-lethal injurious harassment, WDFW may cancel such permits.

Consistent with federal law, WDFW may relocate a wolf on a case-by-case basis to reduce repeated, confirmed wolf depredations, only if WDFW finds that efforts to utilize non-lethal means to resolve the problem have been ineffective.

Consistent with federal law, WDFW may use lethal control on a wolf on a case-by-case basis to reduce repeated depredation if it is documented that livestock have clearly been killed by wolves, but only if WDFW finds that non-lethal methods have been tried but failed to resolve the conflict, depredations are likely to continue, and there is no evidence of intentional feeding or unnatural attraction of wolves by the livestock owner.

During the period that wolves are listed as a sensitive species, consistent with federal law, WDFW may issue a permit to a landowner, or to a landowner's family members or authorized employees, to use lethal control on a wolf, on the landowner's land or public grazing allotment the landowner currently leases, on a case-by-case basis to reduce repeated depredations if it is documented that livestock have clearly been killed by wolves, but only if WDFW finds that non-lethal methods have been tried but failed to resolve the conflict, depredations are likely to continue, and there is no evidence of intentional feeding or unnatural attraction of wolves by the livestock owner. Such a permit shall include: an approved checklist of the reasonable preventative and nonlethal means that must be employed prior to lethal removal and during the duration of the permit; a description of the properties where lethal removal is allowed; the sex of the animal that may be killed; the terms of the permit; the dates when lethal removal is authorized; who may kill the wolf described; and other conditions developed within department procedural documents. Wolves killed under this provision must be reported to WDFW within 24 hours, with additional reasonable time allowed if there is limited access to the take site. The wolf carcass must be surrendered to WDFW, and preservation of physical evidence from the scene of the attack for inspection by WDFW is required.

Whenever possible, lethal control shall be limited to solitary individuals or territorial pairs. Whenever possible, lethal control of a wolf from a reproductive pack shall not occur until pups are more than six months old, the packs contain six or more members (including three or more adults or yearlings), neighboring packs exist nearby, and the state population totals 75 or more wolves. Whenever possible, lethal control shall not occur around or between any core recovery areas that are identified, especially during the denning and pup rearing periods, from April to September.

Wolves may not be intentionally baited, fed, or deliberately attracted for any purpose. WDFW shall investigate and prosecute all illegal killings of wolves.

#### **G. At-risk and other ungulate populations**

If WDFW determines that wolf predation is a primary limiting factor for an at-risk ungulate population, and the wolf population in that recovery region includes at least 4 successful breeding pairs, WDFW may consider reducing wolf abundance in the localized area occupied by the ungulate population before state delisting occurs.

Wolves may be controlled by translocation to other areas, through lethal control, or with other control techniques. While wolves are recovering, nonlethal solutions will be prioritized over lethal control. Before taking any action to address an at-risk ungulate population that would affect wolf populations, WDFW shall consider the status of wolves statewide as well as within the specific recovery region where the ungulate impact is occurring. The extent of wolf control undertaken shall not put the recovery region's overall wolf population at risk of falling below delisting objectives. Management decisions of this type shall be based on scientific principles.

WDFW shall manage ungulate populations other than at-risk populations to provide an adequate prey base for wolves and to maintain harvest opportunities for hunters.

## **H. Compensation**

Commercial livestock operators may be eligible for compensation for losses to livestock that result from confirmed wolf depredations and probable wolf depredations. Livestock eligible for compensation are cattle, pigs, horses, mules, sheep, llamas, goats and guarding and herding animals. To receive compensation, producers must have used appropriate management methods that seek to limit wolf attractants in the vicinity of their livestock, including removal of all dead and dying animals, and other proactive measures. Operators who have already been compensated for a prior depredation must demonstrate that they are implementing appropriate management methods to be eligible for compensation for subsequent depredation occurrences.

On grazing sites of 100 acres or more, where WDFW determines it would be difficult to survey the entire grazing site, and where more than one animal is unaccounted for, each confirmed wolf depredation can result in compensation up to the full current market value for two animals; each probable wolf depredation can result in compensation up to half the current market value for two animals. On other grazing sites, each confirmed wolf depredation can result in compensation up to the full current market value for one animal; each probable wolf depredation can result in the compensation up to half the current market value for one animal. If livestock are injured to the extent that they must be sold prematurely, the operator will receive the difference between the selling price and current market value.

All compensation is limited to that available through funding and subject to any other limitations imposed by state law. Any payments will be reduced by the amounts received by the owner from insurance covering livestock losses or from any other source for the same purpose, including a federal or private compensation program. Payment will also be reduced by the amount received for any financial gain that the owner receives from the sale of a partially salvaged carcass or other product.

## **VII. FURTHER FACTORS ADDRESSING THE NEED FOR RULE MAKING**

Any person petitioning for amendment of a rule must include in the petition the name of the agency responsible for administering the rule and the rationale for amendment of the rule. WAC 82-05-020(1). The agency is the Washington Department of Fish and Wildlife. The rationale for amendment is given above, primarily in section IV. Petitioners are encouraged to provide specific additional information, which follows. RCW 34.05.330(4); WAC 82-05-020(1).

The various proposed amendments are authorized by a variety of statutes, including those codified at RCW §§ 77.04, 77.08, 77.12, 77.15, and 77.36. The proposed amendments are needed for the reasons given above, primarily in section IV. The proposed amendments will not conflict with or duplicate other federal, state or local laws. No alternatives to the proposed amendments would serve the same purpose at less cost. The rule will generally only apply to private entities, except to the extent that the rule applies to WDFW. If the amendments are adopted as proposed, they will serve the purposes for which amendment has been stated. The amendments will not impose unreasonable costs. If, however, the legislature finds that the costs of the proposed compensation program are unreasonable, those costs will not be incurred by the state. The proposed amendments are clearly and simply stated. However, the goal of this petition

has been to codify the Plan as written without changing wording except when necessary. It is possible that the Commission could further simplify some proposed language while remaining true to the Plan's requirements. Finally, the proposed amendments do not differ, without adequate justification, from any federal law that applies to the same activity or subject matter.

### **VIII. A RECENT WDFW PROPOSAL TO AMEND THE WAC URGES CHANGES WHICH DEPART SIGNIFICANTLY FROM THE WOLF PLAN**

Earlier this month, WDFW sent members of a Department-convened wolf advisory committee a set of proposed amendments to the WAC that purports to codify a small number of sections of the Plan. It is expected that these amendments will be forwarded to the Commission for action.

Unlike the approach taken in this petition, the proposed amendments are far from comprehensive and largely limited to increasing WDFW authority to kill wolves and to compensate ranchers for depredations and other losses. Inexplicably, the proposed amendments would grant WDFW authorities not discussed by and even counter to those found in the Plan. For example:

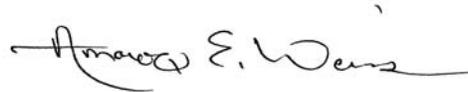
- The Plan defines “in the act of attacking” as “actively biting, wounding or killing,” whereas under the proposed amendment, “attack means that there is evidence to support the fact that animal to animal contact has occurred or is imminent.” This proposal departs significantly from the definition in the Plan, makes the decision of whether an attack has occurred highly subjective, and opens the door for wolves to be killed for stalking, chasing, or simply being in the proximity of other animals.
- The emergency rule that was enacted by the Commission in late April of this year is now proposed as a permanent rule. It would allow wolves to be killed for attacking domestic animals in addition to those classified as livestock. This is a significant departure from the Plan.
- Likewise, WDFW's proposed amendments go even beyond addressing wolves and would allow any game animal to be killed if it attacked livestock or any domestic animal.
- Another proposed revision extends the ability to obtain compensation for losses from just livestock originally under the Plan to now include any domestic animals. The Plan did not allow for compensation for losses of animals other than livestock which, per the Plan, are defined as only cattle, pigs, horses, mules, sheep, llamas, goats, guarding animals and herding dogs.

This approach undoes years of consensus building with diverse stakeholders and the public in creating the Plan. While the need to amend the WAC was contemplated in the Plan, the types of amendments now being proposed are an extreme departure from a Plan that is supported by the public and that was formally adopted by the State. The recent WDFW proposed amendments in no way address the concerns described in this petition, and in fact, simply raise more.

### **VIII. CONCLUSION**

While the Washington Wolf Conservation and Management Plan lays out an important framework for accomplishing wolf recovery in Washington, more is needed. For the many reasons, discussed above, WDFW and the Commission should work to codify key sections of the

Plan into the Washington Administrative Code. This petition now initiates a process requiring a detailed response within 60 days upon receipt. § 34.05.330(1). If this petition is denied at that time, the Conservation Groups will exercise their right to a review of this petition by the Governor for a final executive determination on the appropriateness of this request. § 34.05.330(3). We look forward to a timely response to this petition and thank you for your efforts to promote the critically important goal of restoring wolves to the State of Washington.



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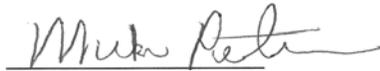
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