NOTICE OF APPEAL

November 27, 2023

Via Certified Mail, Email, and Public Email Portal: https://governor.wa.gov/contacting-governor/contacting-governors-office/send-gov-inslee-e-message

The Honorable Jay Inslee
Governor of Washington
416 14th Avenue SW
Olympia, WA 98504

Ruth Musgrave
Senior Policy Advisor, Natural Resources
416 14th Avenue SW
Olympia, WA 98504
ruth.musgrave@gov.wa.gov

Appeal of the Washington Fish and Wildlife Commission’s denial of rulemaking petition to amend WAC 220-440-080 to bring clarity, accountability, and transparency to wolf management

Dear Governor Inslee:

Pursuant to RCW 34.05.330(3), the undersigned hereby appeal the October 28, 2023 decision by the Washington Fish and Wildlife Commission (Commission) denying our September 15, 2023 petition, which asked the Commission to undertake rulemaking to develop meaningful standards to regulate the management of state-endangered gray wolves (included as Attachment A).1

Nearly 18 months after your September 4, 2020 letter ordering the Washington Department of Fish and Wildlife (Department) to engage in rulemaking to regulate state wolf management, the Department proposed a rule that lacked meaningful or enforceable standards. In response, on July 8, 2022, the Commission voted 5-4 to take “no action” on a potential wolf rule, without any substantive discussion about your direction to “institute practices that will avoid the repeated loss of wolves and livestock in our state.” Since then, the Commission has failed to fulfill its promises to revisit the issue.

Meanwhile, the Department has continued to kill wolves unabated. In fact, of the 53 wolves the Department and state livestock owners have killed in response to wolf-livestock conflicts since 2012, nearly one-third were killed after your September 2020 direction. Poaching and tribal hunting also increased sharply during this time period and WDFW reported an average human-caused mortality of 30 wolves a year in 2021 and 2022—more than double the 14 deaths caused by humans in 2020.

Petitioners brought this rulemaking petition in the hopes it would facilitate the serious discussion the Commission should have had three years ago about how to reduce wolf mortality and facilitate wolf recovery. Unfortunately, as explained in the attached letters, Commission leadership only allocated an hour on the Commission agenda to consider the petition—refusing to give petitioners a chance to be heard, hold committee meetings to explore the issues raised, or allow commissioners to hear from leading national experts on wolf-livestock conflict deterrence. Forced into a hasty vote and based on false and misleading information from the Department, the Commission voted 6-3 to reject the petition.

1 Please also see the attached letter from the Center for Biological Diversity in support of this appeal (Attachment B), which expands on the issues mentioned here.
At a time when wolf populations are under attack in much of the surrounding region, Washington has an opportunity to become a national leader in the rational, science-based management of wolves, while paving the way for a successful statewide wolf recovery effort. Petitioners respectfully ask you to reverse the Commission’s October 28, 2023 decision and order the Department to undertake rulemaking to achieve these goals.

Sincerely,

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

Patrick Kelly
Montana/Washington State Director
Western Watersheds Project

Lizzy Pennock
Carnivore Coexistence Attorney
WildEarth Guardians

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

Brooks Fahy
Executive Director
Predator Defense

Amaroq Weiss
Senior Wolf Advocate
Center for Biological Diversity

Bethany Cotton
Conservation Director
Cascadia Wildlands

Jennifer McCausland
Snr. Vice President for Corporate Policy
Animal Wellness Action
Center for a Humane Economy

Tim Coleman
Executive Director
Kettle Range Conservation Group

John Rosapepe
Pacific Northwest Representative
Endangered Species Coalition

Lynn Mason
Grassroots Organizer
Coexisting with Cougars in Klickitat County
Dear Governor Inslee:

The Center for Biological Diversity (“Center”) submits this letter in support of the appeal filed today by our organization and ten co-petitioners. The Center is a 501(c)(3) non-profit conservation organization with 1.7 million members and supporters nationwide. In Washington, we represent more than 45,500 state residents.

Our appeal requests that you overturn the October 28th denial by the Washington Fish and Wildlife Commission (“Commission”) of our petition for wolf rulemaking. Our petition seeks enforceable rules for how the state Department of Fish and Wildlife (“Department”) manages livestock-wolf conflicts.

The requirements we seek and have sought all along are not to impose requirements on livestock owners, but, rather, requirements that must be met before the state will consider killing wolves.

The purpose of well-defined rules is to guide actions and behavior, so they are made pragmatically according to principles and based upon merit. Rules act as a restraint to uninhibited manipulation, deception, and the advancement of hidden agendas.

You have twice directed the Department and Commission to change course -- to reduce the use of lethal removal of wolves to address livestock conflicts and to enact rules to accomplish this
objective. In 2019, you sent a letter to the Department requesting changes to the gray wolf recovery program to “significantly reduce the need for lethal removal of this species.” In 2020, after the Commission denied one of our previous wolf rulemaking petitions, you granted our appeal and directed the Commission to commence rulemaking. Four years have passed since your initial request, but the Commission has failed to adopt rules and the Department has continued to kill wolves at the same pace.

Over the past ten years, the Center and allies have filed multiple wolf rulemaking petitions with the Commission. In response, each time the Department’s actions have been deceptive, obstructive, and manipulative, seemingly motivated by a desire to obscure its intention to remain free from oversight and free to act arbitrarily. In response, each time the Commission has voted to deny our petitions or voted to adopt no rules.

During the past four years, the Department and Commission have either ignored or devalued your written directives both to change how livestock-wolf conflicts are managed and to adopt enforceable common-sense rules. As a result, the number of wolves killed for actual or alleged conflicts with livestock continues to mount. In fact, of the 53 state-endangered wolves that have been killed by the Department or individual livestock operators, nearly one-third of them (16 wolves) have been killed just in the past three years, while the Department and Commission have continued to ignore your directive.

Our most recent attempt at securing wolf rulemaking was with a petition we filed this September. As explained below, during the six weeks leading to the October 28th Commission meeting and vote, commissioners were prevented from learning from outside expert scientists; the Department presented false and misleading information to the Commission; and the Wolf Advisory Group (“WAG”) sent a letter to the Commission replete with false information. During the decisional meeting itself, several commissioners expressed the need for more time to thoughtfully consider and discuss the issues raised in the petition.

Also during the October 28th Commission meeting, a crowd of hunters carrying not-so-concealed weapons engaged in heckling and harassment of attendees, especially women, in the over-flow room that was not visible to the commissioners and in which there was no obvious law enforcement presence to maintain an environment in which all felt safe.

In the end, after listening to the misleading and deceptive presentation given by the Department, the Commission summarily voted 6:3 to deny the petition.

Through the appeal we are filing today, we ask the Governor’s Office to once again direct the state agency to promulgate rules to better protect and manage wolves.

All reference materials cited in this letter’s endnotes as Exhibits are housed here. We also are providing a separate Zipfile containing the Exhibits.
I. THE NECESSITY OF NEW RULES TO IMPROVE WOLF MANAGEMENT

The Department’s Continued Killing of Wolves

Since the Department’s first controversial decision to decimate the Wedge pack in 2012, wolf management in Washington has continued to stray from the science-based approach engendered in the 2011 Wolf Management Plan (“Plan”). The Department’s deference to the livestock industry drives its decision-making and fails to reflect the strong support for wolves held by most Washington residents.1

Rather than manage wolves according to best available science and considering the perspectives of Washington’s highly diverse public, the Department relies on a Wolf Advisory Group (“WAG”). The Department handpicks the members of the WAG, who are not allowed to criticize the Department, all the while the Department orchestrates the information considered by the WAG. Since the WAG’s composition favors the livestock and sport-hunting industries and lacks a body of strong or even moderate dissidents, this gives the false impression that any support offered by the WAG for Department products and actions including kill orders are a consensus that represents the diverse public views in Washington regarding wolves and how wolves are and should be managed by the state. This includes the “Wolf Livestock Interaction Protocol” (“Protocol”) that the Department crafted in 2016 and modified in 2017. Despite significant public outcry, the Department issues kill orders year after year on state-endangered wolves. The Department either kills the wolves themselves or issues kill permits to individual livestock owners. Even more wolves are killed by livestock operators claiming they caught wolves in the act of attacking livestock (“CIA killings”).

So far, under these Department kill orders, 75% of the 44 wolves killed were for the same livestock family, which refuses to adequately protect its cattle. Moreover, 75% of the wolves have been killed on behalf of private, for-profit industry due to livestock predations which occurred on lands owned by the public.

Livestock operators killed another nine wolves under the CIA killings provision, which brings the total number of wolves killed for conflicts to 53.

We bring to your attention, as well, that at the most recent WAG meeting held November 15-16, several WAG members proposed for the Department to be able to kill wolves even more quickly. They argued for the Department to count against Washington wolf packs any livestock predations a pack had been responsible for in Oregon, Idaho or British Columbia, on any occasion a pack had temporarily wandered across a state or international border. Thus, the WAG also is ignoring directives from the Governor’s Office to significantly reduce the need for lethal removal of wolves.

The State Agency’s Repeated Refusals to Follow Direction from the Governor’s Office

The Governor’s Office has twice advised the Department and Commission -- in writing -- of a need to deemphasize wolf killing in their management. But the agency has not changed its approach:
• On September 30, 2019, the Governor’s Office sent a letter asking the Department for changes to the gray wolf recovery program to “significantly reduce the need for lethal removal of this species.” Over the next six months, however, the Department made no changes to its Protocol or decision-making process.

• In May 2020, conservation groups (including four of the Petitioners) filed a wolf rule-making administrative petition with the Commission seeking enforceable rules for addressing livestock-wolf conflicts, which the Commission denied that July. The groups appealed the denial and on September 4, 2020, the Governor’s Office granted the appeal and directed the Commission to commence wolf rulemaking.

• Nearly two years after the Governor’s Office granted the appeal, the Department finally gave a presentation to the Commission. At that meeting, on July 8, 2022, the Commission voted 5:4 for the no-action alternative under the State Environmental Policy Act (SEPA) that no rule be adopted.

In the meantime, wolf-killing by the Department on behalf of the livestock industry has continued unabated. We reiterate that, of the 53 state-endangered wolves killed in response to actual or alleged conflicts in Washington between 2012-2023, nearly one-third (16) took place in just the past three years.

**The 2023 Petition’s Request for Improved Wolf Rules**

Petitioners filed the petition for rulemaking with the Commission on September 15, 2023 (“Petition”). Our proposed rule changes include the following recommendations:

• 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 closely mirrors an existing provision in the Protocol.

• Set minimum standards before the Department can issue a kill order against a wolf pack, including requiring that two appropriate proactive deterrents are in place before such an order is considered.

• Defines what the Department may count as “range riding” before it qualifies as an appropriate proactive deterrent.

• Eliminate killing of wolves on public land or as a result of predations of livestock grazing on public land. If our wildlife is going to be able to survive the threats its faces from climate change and 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. Absent these requirements, predator control is truly just a “shot in the dark.”

- Limit the use of the “caught in the act” (CIA) provision as a loophole that allows livestock owners to kill wolves without any accountability. Ten wolves have been shot with nine of those confirmed killed, between June 2017-May 2023. Five of the instances took place just in the past 17 months. In seven of the nine killings, incidence reports show the wolves were not attacking when killed.\(^5\)

- Prevent the Department from killing wolves due to livestock predations in close proximity to known core wolf areas, including dens and rendezvous sites. These are known, essential, high-use wolf areas yet the Department has repeatedly killed wolves and eliminated entire wolf packs due to entirely avoidable conflicts that resulted after cattle were allowed to graze in close proximity to known core wolf areas.

- Prevent the Department from killing wolves when doing so will orphan or jeopardize the survival of pups. Washington’s wolf plan purports to be a conservation and management plan. Killing or orphaning pups is on the extreme end of the management spectrum and does nothing for conservation.

- 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, and it is long past time to formalize it into rule, 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.
II. INADEQUATE AND IMPROPER CONSIDERATION OF THE PETITION BY THE COMMISSION

The Commission’s Failure to Discuss a Previous Petition Prompts Submission of a Revised Petition

Prior to submission of the September 15, 2023, Petition, petitioners filed a petition on July 18, 2023. In the two months following its submission, the Commission held no public meetings discussing the petition. In those same two months, petitioners held individual calls with commissioners, who advised petitioners that the Commission had not discussed the petition.

In the calls between petitioners and individual commissioners, commissioners candidly explained that they were interested in, among other topics, what current science had to say about using lethal versus nonlethal conflict-deterrence methods, if having a rule would incite or deter litigation, whether having a rule could result in more or fewer conflicts, and the financial costs of using nonlethal methods versus killing wolves.

Thus, to allow commissioners time to discuss the petition and better inform their decision-making, on September 5th, petitioners withdrew the July petition and notified the Commission that petitioners would refile a revised petition the following week. Petitioners intended that the re-filing would give commissioners a new 60-day period for voting on the petition and therefore be fully informed when it came time to vote.

During the October 28th hearing, the date set for the Commission’s vote on the petition, one commissioner noted that when wolf rulemaking petitions had been denied in the past, the Commission would promise to discuss with petitioners and others what the Commission should do about all the wolf management concerns raised in the petitions, but that the commissioners get busy and forget about it and it doesn’t happen. Another commissioner listed several requests the petition was making and opined these were issues the Commission needs to look at. A third commissioner said that accepting the rulemaking petition did not mean there would be a resultant rule containing petitioners’ proposed language, but that acceptance of the petition would finally allow the Commission to initiate the needed conversations.

It was clear from the commissioners’ comments that, once again, the Commission had not in the months leading up to the hearing discussed the petition, the science of wolf-human coexistence, or any risk/benefit analysis of reducing livestock-wolf conflicts and the killing of state-endangered wolves. Nevertheless, the Commission moved forward and forced commissioners to vote on whether to accept the petition.

Commissioners Denied an Opportunity to Hear Science on Coexisting with Large Carnivores Prior to the Vote

As documented in a letter sent to the Commission October 25, 2023, Dr. Adrian Treves described the following obstruction of science by the Department.
• The Department and state legal counsel improperly prohibited Commissioner Lorna Smith from holding a science panel on coexisting with large carnivores before the Commission’s Wildlife Subcommittee, which she chairs. Smith was told it would create too much legal risk to bring in a panel of outside scientists.

• To ensure that commissioners would still have access to this highly relevant scientific information, Dr. Adrian Treves hosted the panel webinar through his university and invited the commissioners to watch along with other members of the public. However, just prior to the event, Dr. Treves was informed by several commissioners that they would not be watching the panel, because the Department’s legal counsel advised them that attending the webinar could place them at risk of personal liability as their attendance would violate open meeting law requirements -- despite a contrary conclusion reached in a 2006 advisory opinion issued by the same office of legal counsel.9

Consideration of the science presented by the expert panel, whether held by the Commission’s wildlife subcommittee or by a university, would have allowed a more informed vote by commissioners and may have affected the Commission’s ultimate decision on the petition.

III. THE DEPARTMENT MISPRESENTED KEY SCIENCE BEFORE THE COMMISSION

The Department’s Written Position Statement Opposing Wolf Rulemaking Constituted Scientific Misconduct

Prior to the October 28th Commission meeting and wolf rulemaking petition vote, the Department posted to the Commission’s webpage for the October 28th meeting, a Summary Sheet composed of a statement opposing wolf rulemaking.10 In its statement, the Department touted support for killing wolves to address conflicts with livestock.

In support of its assertion that killing wolves for livestock conflicts is an effective means for managing conflicts, the Department, at page 3 of its written statement, cited to only one published science study, namely, a 2005 study co-authored by Dr. Adrian Treves. Dr. Treves sent the Commission a letter informing them that reliance on the paper constituted scientific misconduct.11

The 18 years-old paper examines whether killing wolves can aid in reducing conflicts. The Department failed to inform the Commission that the two phrases it cited from the paper were a hypothesis that did not reflect the entirety of the paper’s conclusions. Most importantly, the Department did not explain that the hypothesis has since been tested multiple times in published research and proven wrong.
The Department’s PowerPoint Presentation Contained False, Misleading, and Biased Information and Images

Prior to the Commission meeting and wolf rulemaking petition vote, the Department also posted to the Commission’s webpage for the October 28th meeting, a PowerPoint presentation it planned to give at the meeting. The PowerPoint presentation contained multiple misleading, false, and/or biased statements and images. After previewing the PowerPoint, on October 27th, co-petitioner Center for Biological Diversity sent a letter to the Commission and Department expressing grave concerns about the presentation.

In advance of the Commission meeting the following day, the Department edited its PowerPoint presentation by adding two more slides. The additions, however, did not correct the identified problems and instead relayed additional misleading information to the Commission.

For example, one slide showed only one year’s worth of data to compare Washington’s numbers of wolves and livestock predation incidents to other states, despite the availability of more complete data sets that would have shown the effectiveness of less-lethal approaches to wolf management. As another example, the Department presented a slide that did not include all the wolf killings done in Washington – by excluding the CIA killings -- when comparing with Oregon, which made it appear like the two states have killed similar number of wolves. In actuality, at the time of the Commission meeting on October 28th, Oregon had killed 43 wolves and Washington killed significantly more, 53 wolves, in the same time frame.

IV. THE WOLF ADVISORY GROUP’S MISLEADING LETTER INFLUENCES THE COMMISSION’S VOTE

Members of the WAG prepared a letter dated October 25th, which they submitted to the Commission and read aloud during Open Public Forum of the Commission’s meeting on October 27th, the day before the Commission voted on the wolf rulemaking petition. The WAG letter, signed by all but two members of the WAG, urged the Commission to vote against wolf rulemaking.

The WAG’s letter recited multiple factors as the basis to oppose wolf rules. The letter was clearly controlled and orchestrated by the Department. Moreover, the factors cited in the letter as reasons to not adopt wolf rules were false. Specifically:

- The WAG letter incorrectly and without citation to any sources, asserts Washington “experience[s] fewer wolf conflicts per year and, as a result, remove[s] fewer wolves annually than any other state.”

- The WAG letter incorrectly asserts that with respect to the funding the state legislature has appropriated for proactive non-lethal deterrence measures and WDFW wildlife conflict staff, “[n]o other Western state has made the level of commitment that Washington has.”
• The WAG letter incorrectly asserts that [under the protocol], producers “are required to have a minimum of two WDFW-approved non-lethal deterrents in place for lethal management to be considered.”

• The WAG letter uses the same misleading statement the Department regularly uses when discussing annual wolf population growth in the state, by asserting “Washington’s wolf population has grown at an average pace exceeding 20% annually since wolves were first documented in 2008” and goes on to reference the 2022 growth rate of only 5% as being an “abnormal year.”

• The WAG letter erroneously asserts “the Department’s scientists have recommended [wolves’] status be downlisted to sensitive based on sound data collection and evaluation of population trends.”

The Center for Biological Diversity’s October 27th letter to the Commission provides factually accurate information countering the WAG letter’s falsehoods.16

One of the representatives on the WAG who signed the letter is the state Director for the Humane Society of the United States (HSUS). But on November 14th, he sent a letter to the Commission apologizing for having signed on to the WAG letter and requesting the Commission strike his signature from that letter. HSUS’ letter to the Commission noted that their organization disagrees with statements in the WAG letter regarding science cited in the rulemaking petition and implications the WAG letter makes regarding the status of Washington’s wolf population.17

It is likely that the inaccuracies and falsehoods contained in the WAG letter may have influenced several commissioners to vote against accepting the wolf rulemaking petition.

V. THE INTIMIDATING ATMOSPHERE AT THE COMMISSION MEETING

The vote on the wolf rulemaking petition took place in an atmosphere of fear and intimidation. During both days of open public comment, on October 27th and 28th, hunters in camouflage and animal skins crowded the meeting room. Other meeting attendees observed concealed weapons, including a knife and firearms, and reported later that they had felt unsafe. These circumstances were documented in an email subsequently sent by a commissioner to the Department’s director and to the chief of its law enforcement program.18

This crowd came to oppose a conservation policy the commission has been considering, promote increased killing of bears and cougars, and encourage commissioners to reject the wolf petition. Members of this crowd later crowed about the impact they had intimidating commissioners and wildlife advocates—and women, in particular.

In comments posted afterwards on several Washington online hunting forums, they proclaimed that they had scared the “antis” so much that they “wouldn’t come out when their names were called,” and talked about how they had disrupted the proceedings by jeering, groaning, and
laughing. They took credit for the “no” vote on the wolf rulemaking petition and that they had scored a “massive win[,] for hunters, anglers [and] ranchers.”

VI. CONCLUSION

The Governor’s Office should once again direct the Commission and Department to promulgate necessary rules to protect Washington’s endangered, ecologically significant wolves.

Legally enforceable rules will provide the conservation community, livestock owners and the Washington public with the transparency and accountability they deserve from a state agency. Such rules also will provide the wolf -- part of Washington’s natural wildlife heritage -- with the responsible stewardship and conservation measures it deserves.

Enforceable rules will act to guide the actions and behavior of the Department, so they are principled, pragmatic and based on science and merit, and not subject to manipulation, deception, political expediency and hidden agendas.

Sixteen wolves have been killed in just the past three years, even after you directed the Department to change. That’s a travesty. We call for an end to the constant cycle of wolf-killing, livestock conflict, and public outcry.

For these reasons, as well as those supplied in the petition, we ask the Governor’s Office to reverse the Commission’s October 28th denial of the petition and direct the Commission to immediately commence a rulemaking process to codify rules on lethal wolf removal, areas of chronic conflict, and caught-in-the-act killing of wolves.

Without these changes and progress, ineffective and controversial wolf management will continue – with no clarity, no protection for our wolves or livestock, and no voice for those of us who so passionately care about wolf conservation and sound governance.

Sincerely,

Amaroq Weiss, M.S., J.D.
Senior Wolf Advocate
Center for Biological Diversity

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Survey results at p. iii show 58% support for Washington wolf recovery and 26% opposed.

Exhibit A.
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-%20Wol%20Mgmt%20Appeal%20%28final-signed%29.pdf (last viewed July 18, 2023). The letter asked the Department to institute rulemaking that would focus on four areas: Standardizing definitions and requirements for range riders; instituting requirements for the use of nonlethal deterrents most appropriate for specified situations; mandating the use of action plans in areas of chronic predations; putting in place compliance measures for livestock operators who do not implement required nonlethal measures.

Exhibit B.

Exhibit C.
The Department’s regularly posted wolf updates and annual reports show that between 2017-2023, nine wolves have been shot and killed under the CIA killing provision, with a tenth animal shot whose body could not be found. Four of the incidents occurred in just the past two years. In seven of the nine instances in which wolves are confirmed to have been killed, descriptions contained in Law Enforcement reports show that the wolves were not attacking but were merely chasing or slowly approaching fenced pastures. In these instances, shooters had ample opportunity to fire a warning shot to try first to scare wolves away, but instead simply fired to kill. Law Enforcement officers noted in several reports that shooters’ stories were suspicious and wolf carcasses appear to have been moved to match what the shooters claimed had occurred. In one of the incidents, the ranching operation was overflowing with open carcass pits that had been drawing in wolves for months and the livestock owner refused state requests to haul away, bury or burn the carcasses which were acting as an unnatural attractant. Law Enforcement reports for each incident available at Exhibit D.

Exhibit D.
September 5, 2023, Notice of Withdrawal of July 18, 2023, Wolf Rulemaking Petition. Exhibit E.

Exhibit E.

Exhibit F.
October 25, 2023, Letter from Dr. Adrian Treves to Commission Regarding Scientific Misconduct and Suppression of Science. Exhibit F.

Exhibit G.
Open Public Meetings Act https://apps.leg.wa.gov/rcw/default.aspx?cite=42.30; Applicability of Open Public Meetings Act when a quorum of the members of a governing body are present at a meeting not called by that body | Washington State

Exhibit H.

Exhibit I.
October 25, 2023, Letter from Dr. Adrian Treves, supra. Exhibit F.

Exhibit J.

Exhibit K.
October 25, 2023, Letter from the Wolf Advisory Group (WAG) to the Commission. Exhibit L.

Exhibit L.
October 27, 2023, Letter from Center for Biological Diversity, supra. Exhibit J.

Exhibit M.
November 14, 2023, Letter from HSUS to the Commission requesting it strike HSUS’ signature from the WAG letter. Exhibit M.

Exhibit N.
November 11, 2023, email from Commissioner Lorna Smith to WDFW director Kelly Susewind and WDFW law enforcement chief Steve Bear. Exhibit N.

Exhibit O.
Online posts made October 28, 2023, on Washington Hunting Forum. Exhibit O.
November 27, 2023


Dear Governor Inslee:

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Rather than manage wolves according to best available science and considering the perspectives of Washington’s highly diverse public, the Department relies on a Wolf Advisory Group (“WAG”). The Department handpicks the members of the WAG, who are not allowed to criticize the Department, all the while the Department orchestrates the information considered by the WAG. Since the WAG’s composition favors the livestock and sport-hunting industries and lacks a body of strong or even moderate dissidents, this gives the false impression that any support offered by the WAG for Department products and actions including kill orders are a consensus that represents the diverse public views in Washington regarding wolves and how wolves are and should be managed by the state. This includes the “Wolf Livestock Interaction Protocol” (“Protocol”) that the Department crafted in 2016 and modified in 2017. Despite significant public outcry, the Department issues kill orders year after year on state-endangered wolves. The Department either kills the wolves themselves or issues kill permits to individual livestock owners. Even more wolves are killed by livestock operators claiming they caught wolves in the act of attacking livestock (“CIA killings”).

So far, under these Department kill orders, 75% of the 44 wolves killed were for the same livestock family, which refuses to adequately protect its cattle. Moreover, 75% of the wolves have been killed on behalf of private, for-profit industry due to livestock predations which occurred on lands owned by the public.

Livestock operators killed another nine wolves under the CIA killings provision, which brings the total number of wolves killed for conflicts to 53.

We bring to your attention, as well, that at the most recent WAG meeting held November 15-16, several WAG members proposed for the Department to be able to kill wolves even more quickly. They argued for the Department to count against Washington wolf packs any livestock predations a pack had been responsible for in Oregon, Idaho or British Columbia, on any occasion a pack had temporarily wandered across a state or international border. Thus, the WAG also is ignoring directives from the Governor’s Office to significantly reduce the need for lethal removal of wolves.

The State Agency’s Repeated Refusals to Follow Direction from the Governor’s Office

The Governor’s Office has twice advised the Department and Commission -- in writing -- of a need to deemphasize wolf killing in their management. But the agency has not changed its approach:
• On September 30, 2019, the Governor’s Office sent a letter asking the Department for changes to the gray wolf recovery program to “significantly reduce the need for lethal removal of this species.” Over the next six months, however, the Department made no changes to its Protocol or decision-making process.

• In May 2020, conservation groups (including four of the Petitioners) filed a wolf rule-making administrative petition with the Commission seeking enforceable rules for addressing livestock-wolf conflicts, which the Commission denied that July. The groups appealed the denial and on September 4, 2020, the Governor’s Office granted the appeal and directed the Commission to commence wolf rulemaking.

• Nearly two years after the Governor’s Office granted the appeal, the Department finally gave a presentation to the Commission. At that meeting, on July 8, 2022, the Commission voted 5:4 for the no-action alternative under the State Environmental Policy Act (SEPA) that no rule be adopted.

In the meantime, wolf-killing by the Department on behalf of the livestock industry has continued unabated. We reiterate that, of the 53 state-endangered wolves killed in response to actual or alleged conflicts in Washington between 2012-2023, nearly one-third (16) took place in just the past three years.

**The 2023 Petition’s Request for Improved Wolf Rules**

Petitioners filed the petition for rulemaking with the Commission on September 15, 2023 (“Petition”). Our proposed rule changes include the following recommendations:

• 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 closely mirrors an existing provision in the Protocol.

• Set minimum standards before the Department can issue a kill order against a wolf pack, including requiring that two appropriate proactive deterrents are in place before such an order is considered.

• Defines what the Department may count as “range riding” before it qualifies as an appropriate proactive deterrent.

• Eliminate killing of wolves on public land or as a result of predations of livestock grazing on public land. If our wildlife is going to be able to survive the threats its faces from climate change and 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. Absent these requirements, predator control is truly just a “shot in the dark.”

- Limit the use of the “caught in the act” (CIA) provision as a loophole that allows livestock owners to kill wolves without any accountability. Ten wolves have been shot with nine of those confirmed killed, between June 2017-May 2023. Five of the instances took place just in the past 17 months. In seven of the nine killings, incidence reports show the wolves were not attacking when killed.\(^5\)

- Prevent the Department from killing wolves due to livestock predations in close proximity to known core wolf areas, including dens and rendezvous sites. These are known, essential, high-use wolf areas yet the Department has repeatedly killed wolves and eliminated entire wolf packs due to entirely avoidable conflicts that resulted after cattle were allowed to graze in close proximity to known core wolf areas.

- Prevent the Department from killing wolves when doing so will orphan or jeopardize the survival of pups. Washington’s wolf plan purports to be a conservation and management plan. Killing or orphaning pups is on the extreme end of the management spectrum and does nothing for conservation.

- 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, and it is long past time to formalize it into rule, 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.
II. INADEQUATE AND IMPROPER CONSIDERATION OF THE PETITION BY THE COMMISSION

The Commission’s Failure to Discuss a Previous Petition Prompts Submission of a Revised Petition

Prior to submission of the September 15, 2023, Petition, petitioners filed a petition on July 18, 2023. In the two months following its submission, the Commission held no public meetings discussing the petition. In those same two months, petitioners held individual calls with commissioners, who advised petitioners that the Commission had not discussed the petition.

In the calls between petitioners and individual commissioners, commissioners candidly explained that they were interested in, among other topics, what current science had to say about using lethal versus nonlethal conflict-deterrence methods, if having a rule would incite or deter litigation, whether having a rule could result in more or fewer conflicts, and the financial costs of using nonlethal methods versus killing wolves.

Thus, to allow commissioners time to discuss the petition and better inform their decision-making, on September 5th, petitioners withdrew the July petition and notified the Commission that petitioners would refile a revised petition the following week. Petitioners intended that the re-filing would give commissioners a new 60-day period for voting on the petition and therefore be fully informed when it came time to vote.6

During the October 28th hearing, the date set for the Commission’s vote on the petition, one commissioner noted that when wolf rulemaking petitions had been denied in the past, the Commission would promise to discuss with petitioners and others what the Commission should do about all the wolf management concerns raised in the petitions, but that the commissioners get busy and forget about it and it doesn’t happen. Another commissioner listed several requests the petition was making and opined these were issues the Commission needs to look at. A third commissioner said that accepting the rulemaking petition did not mean there would be a resultant rule containing petitioners’ proposed language, but that acceptance of the petition would finally allow the Commission to initiate the needed conversations.7

It was clear from the commissioners’ comments that, once again, the Commission had not in the months leading up to the hearing discussed the petition, the science of wolf-human coexistence, or any risk/benefit analysis of reducing livestock-wolf conflicts and the killing of state-endangered wolves. Nevertheless, the Commission moved forward and forced commissioners to vote on whether to accept the petition.

Commissioners Denied an Opportunity to Hear Science on Coexisting with Large Carnivores Prior to the Vote

As documented in a letter sent to the Commission October 25, 2023, Dr. Adrian Treves described the following obstruction of science by the Department.8
The Department and state legal counsel improperly prohibited Commissioner Lorna Smith from holding a science panel on coexisting with large carnivores before the Commission’s Wildlife Subcommittee, which she chairs. Smith was told it would create too much legal risk to bring in a panel of outside scientists.

To ensure that commissioners would still have access to this highly relevant scientific information, Dr. Adrian Treves hosted the panel webinar through his university and invited the commissioners to watch along with other members of the public. However, just prior to the event, Dr. Treves was informed by several commissioners that they would not be watching the panel, because the Department’s legal counsel advised them that attending the webinar could place them at risk of personal liability as their attendance would violate open meeting law requirements -- despite a contrary conclusion reached in a 2006 advisory opinion issued by the same office of legal counsel.9

Consideration of the science presented by the expert panel, whether held by the Commission’s wildlife subcommittee or by a university, would have allowed a more informed vote by commissioners and may have affected the Commission’s ultimate decision on the petition.

III. THE DEPARTMENT MISPRESENTED KEY SCIENCE BEFORE THE COMMISSION

The Department’s Written Position Statement Opposing Wolf Rulemaking Constituted Scientific Misconduct

Prior to the October 28th Commission meeting and wolf rulemaking petition vote, the Department posted to the Commission’s webpage for the October 28th meeting, a Summary Sheet composed of a statement opposing wolf rulemaking.10 In its statement, the Department touted support for killing wolves to address conflicts with livestock.

In support of its assertion that killing wolves for livestock conflicts is an effective means for managing conflicts, the Department, at page 3 of its written statement, cited to only one published science study, namely, a 2005 study co-authored by Dr. Adrian Treves. Dr. Treves sent the Commission a letter informing them that reliance on the paper constituted scientific misconduct.11

The 18 years-old paper examines whether killing wolves can aid in reducing conflicts. The Department failed to inform the Commission that the two phrases it cited from the paper were a hypothesis that did not reflect the entirety of the paper’s conclusions. Most importantly, the Department did not explain that the hypothesis has since been tested multiple times in published research and proven wrong.
The Department’s PowerPoint Presentation Contained False, Misleading, and Biased Information and Images

Prior to the Commission meeting and wolf rulemaking petition vote, the Department also posted to the Commission’s webpage for the October 28th meeting, a PowerPoint presentation it planned to give at the meeting. The PowerPoint presentation contained multiple misleading, false, and/or biased statements and images. After previewing the PowerPoint, on October 27th, co-petitioner Center for Biological Diversity sent a letter to the Commission and Department expressing grave concerns about the presentation.

In advance of the Commission meeting the following day, the Department edited its PowerPoint presentation by adding two more slides. The additions, however, did not correct the identified problems and instead relayed additional misleading information to the Commission.

For example, one slide showed only one year’s worth of data to compare Washington’s numbers of wolves and livestock predation incidents to other states, despite the availability of more complete data sets that would have shown the effectiveness of less-lethal approaches to wolf management. As another example, the Department presented a slide that did not include all the wolf killings done in Washington – by excluding the CIA killings -- when comparing with Oregon, which made it appear like the two states have killed similar number of wolves. In actuality, at the time of the Commission meeting on October 28th, Oregon had killed 43 wolves and Washington killed significantly more, 53 wolves, in the same time frame.

IV. THE WOLF ADVISORY GROUP’S MISLEADING LETTER INFLUENCES THE COMMISSION’S VOTE

Members of the WAG prepared a letter dated October 25th, which they submitted to the Commission and read aloud during Open Public Forum of the Commission’s meeting on October 27th, the day before the Commission voted on the wolf rulemaking petition. The WAG letter, signed by all but two members of the WAG, urged the Commission to vote against wolf rules.

The WAG’s letter recited multiple factors as the basis to oppose wolf rules. The letter was clearly controlled and orchestrated by the Department. Moreover, the factors cited in the letter as reasons to not adopt wolf rules were false. Specifically:

- The WAG letter incorrectly and without citation to any sources, asserts Washington “experience[s] fewer wolf conflicts per year and, as a result, remove[s] fewer wolves annually than any other state.”

- The WAG letter incorrectly asserts that with respect to the funding the state legislature has appropriated for proactive non-lethal deterrence measures and WDFW wildlife conflict staff, “[n]o other Western state has made the level of commitment that Washington has.”
• The WAG letter incorrectly asserts that [under the protocol], producers “are required to have a minimum of two WDFW-approved non-lethal deterrents in place for lethal management to be considered.”

• The WAG letter uses the same misleading statement the Department regularly uses when discussing annual wolf population growth in the state, by asserting “Washington’s wolf population has grown at an average pace exceeding 20% annually since wolves were first documented in 2008” and goes on to reference the 2022 growth rate of only 5% as being an “abnormal year.”

• The WAG letter erroneously asserts “the Department’s scientists have recommended [wolves’] status be downlisted to sensitive based on sound data collection and evaluation of population trends.”

The Center for Biological Diversity’s October 27th letter to the Commission provides factually accurate information countering the WAG letter’s falsehoods.16

One of the representatives on the WAG who signed the letter is the state Director for the Humane Society of the United States (HSUS). But on November 14th, he sent a letter to the Commission apologizing for having signed on to the WAG letter and requesting the Commission strike his signature from that letter. HSUS’ letter to the Commission noted that their organization disagrees with statements in the WAG letter regarding science cited in the rulemaking petition and implications the WAG letter makes regarding the status of Washington’s wolf population.17

It is likely that the inaccuracies and falsehoods contained in the WAG letter may have influenced several commissioners to vote against accepting the wolf rulemaking petition.

V. THE INTIMIDATING ATMOSPHERE AT THE COMMISSION MEETING

The vote on the wolf rulemaking petition took place in an atmosphere of fear and intimidation. During both days of open public comment, on October 27th and 28th, hunters in camouflage and animal skins crowded the meeting room. Other meeting attendees observed concealed weapons, including a knife and firearms, and reported later that they had felt unsafe. These circumstances were documented in an email subsequently sent by a commissioner to the Department’s director and to the chief of its law enforcement program.18

This crowd came to oppose a conservation policy the commission has been considering, promote increased killing of bears and cougars, and encourage commissioners to reject the wolf petition. Members of this crowd later crowed about the impact they had intimidating commissioners and wildlife advocates—and women, in particular.

In comments posted afterwards on several Washington online hunting forums, they proclaimed that they had scared the “antis” so much that they “wouldn’t come out when their names were called,” and talked about how they had disrupted the proceedings by jeering, groaning, and
laughing. They took credit for the “no” vote on the wolf rulemaking petition and that they had scored a “massive win[] for hunters, anglers [and] ranchers.”

VI. CONCLUSION

The Governor’s Office should once again direct the Commission and Department to promulgate necessary rules to protect Washington’s endangered, ecologically significant wolves.

Legally enforceable rules will provide the conservation community, livestock owners and the Washington public with the transparency and accountability they deserve from a state agency. Such rules also will provide the wolf -- part of Washington’s natural wildlife heritage -- with the responsible stewardship and conservation measures it deserves.

Enforceable rules will act to guide the actions and behavior of the Department, so they are principled, pragmatic and based on science and merit, and not subject to manipulation, deception, political expediency and hidden agendas.

Sixteen wolves have been killed in just the past three years, even after you directed the Department to change. That’s a travesty. We call for an end to the constant cycle of wolf-killing, livestock conflict, and public outcry.

For these reasons, as well as those supplied in the petition, we ask the Governor’s Office to reverse the Commission’s October 28th denial of the petition and direct the Commission to immediately commence a rulemaking process to codify rules on lethal wolf removal, areas of chronic conflict, and caught-in-the-act killing of wolves.

Without these changes and progress, ineffective and controversial wolf management will continue – with no clarity, no protection for our wolves or livestock, and no voice for those of us who so passionately care about wolf conservation and sound governance.

Sincerely,

Amaroq Weiss, M.S., J.D.
Senior Wolf Advocate
Center for Biological Diversity

Survey results at p. iii show 58% support for Washington wolf recovery and 26% opposed.

Exhibit A.

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%20final-signed%20.pdf (last viewed July 18, 2023). The letter asked the Department to institute rulemaking that would focus on four areas: Standardizing definitions and requirements for range riders; instituting requirements for the use of nonlethal deterrents most appropriate for specified situations; mandating the use of action plans in areas of chronic predations; putting in place compliance measures for livestock operators who do not implement required nonlethal measures. Exhibit B.

Washington Fish and Wildlife Commission meeting minutes from July 8, 2022, voting 5:4 for alternative four, not to adopt wolf rules. https://wdfw.wa.gov/sites/default/files/2022-08/20220708%20Approved%20Web%20Conference%20Minutes.pdf Exhibit C.

The Department’s regularly posted wolf updates and annual reports show that between 2017-2023, nine wolves have been shot and killed under the CIA killing provision, with a tenth animal shot whose body could not be found. Four of the incidents occurred in just the past two years. In seven of the nine instances in which wolves are confirmed to have been killed, descriptions contained in Law Enforcement reports show that the wolves were not attacking but were merely chasing or slowly approaching fenced pastures. In these instances, shooters had ample opportunity to fire a warning shot to try first to scare wolves away, but instead simply fired to kill. Law Enforcement officers noted in several reports that shooters’ stories were suspicious and wolf carcasses appear to have been moved to match what the shooters claimed had occurred. In one of the incidents, the ranching operation was overflowing with open carcass pits that had been drawing in wolves for months and the livestock owner refused state requests to haul away, burn or bury the carcasses which were acting as an unnatural attractant. Law Enforcement reports for each incident available at Exhibit D.

Notice of Withdrawal of July 18, 2023, Wolf Rulemaking Petition. Exhibit E.


Letter from Dr. Adrian Treves to Commission Regarding Scientific Misconduct and Suppression of Science. Exhibit F.

Open Public Meetings Act https://apps.leg.wa.gov/rcw/default.aspx?cite=42.30; Applicability of Open Public Meetings Act when a quorum of the members of a governing body are present at a meeting not called by that body | Washington State Exhibit G.

October 25, 2023, Letter from Dr. Adrian Treves to Commission. Exhibit F.


October 27, 2023, Letter from Center for Biological Diversity to the Commission. Exhibit J.

October 25, 2023, Letter from the Wolf Advisory Group (WAG) to the Commission. Exhibit K.

October 27, 2023, Letter from Center for Biological Diversity, supra. Exhibit J.

November 14, 2023, Letter from HSUS to the Commission requesting it strike HSUS’ signature from the WAG letter. Exhibit M.

November 11, 2023, email from Commissioner Lorna Smith to WDFW director Kelly Susewind and WDFW law enforcement chief Steve Bear. Exhibit N.

Online posts made October 28, 2023, on Washington Hunting Forum. Exhibit O.