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SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

CENTER FOR BIOLOGICAL DIVERSITY and CASCADIA WILDLANDS, Petitioners, v. WASHINGTON DEPARTMENT OF FISH AND WILDLIFE; KELLY SUSEWIND, in his official capacity as Director of the Washington Department of Fish and Wildlife; and LISA WOOD, in her official capacity as the SEPA Coordinator of the Washington Department of Fish and Wildlife, Respondents.	No. _____ PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF

The Center for Biological Diversity and Cascadia Wildlands (collectively "Petitioners") respectfully file this petition challenging as unlawful the actions of Respondents Washington Department of Fish and Wildlife ("WDFW"), WDFW Director Kelly Susewind, and Lisa Wood, WDFW's coordinator responsible for its adherence to the Washington State Environmental Policy Act ("SEPA"), in improperly authorizing, on August 20, 2018, the lethal removal of members of Washington's endangered gray wolf population, namely one or more members of the Togo Pack.

NATURE OF THE ACTION

1. This is a petition for declaratory and injunctive relief arising out of and alleging violations of the Washington Administrative Procedure Act ("APA"), RCW Ch. 34.05 and

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SEPA, RCW Ch. 43.21C. This action challenges Respondent Susewind's order to kill members of the Togo Pack, announced on August 20, 2018 (the "Togo Pack Kill Order"), attached hereto as Exhibit ("Ex.") A. Petitioners seek a declaration that Respondents' authorization of the killing of one or more members of the Togo Pack violated Washington law, an injunction preventing WDFW from taking action to execute the Togo Pack Kill Order until its legality can be reviewed by the Court, and an injunction preventing Respondents from authorizing or implementing any future such orders without complying with SEPA and the APA.

2. Gray wolves are listed as a federal endangered species in the western two-thirds of Washington, where they are under the management of the U.S. Fish and Wildlife Service. Gray wolves are listed as a state endangered species throughout Washington. WDFW manages the wolf population in portions of the state where wolves are not a federal endangered species, under the auspices of the 2011 Wolf Conservation and Management Plan ("Plan"). The Plan was a phased non-project review proposal under SEPA, for which WDFW issued a Determination of Significance, acknowledging that it required the development of an Environmental Impact Statement ("EIS"). The EIS contemplates that because the project was a phased review, "specific actions that may be proposed in the future relating to gray wolf management in Washington would be evaluated under a supplemental environmental impact statement process."

3. The Plan is "the state recovery plan" for gray wolves. Its purpose is to "ensure the reestablishment of a self-sustaining population of gray wolves in Washington and to encourage social tolerance for the species by addressing and reducing conflicts." The Plan contemplates potential lethal control of wolves when there are conflicts with livestock, which the EIS notes is "unusual" in a recovery plan for an endangered species, but is included as a tool to "build public tolerance for wolves." Public tolerance is crucial to recovery because "[h]uman-caused mortality is the single most important factor" in wolf recovery, and thus "addressing and reducing conflicts is an important part of conservation." As a result, the EIS provides: "Lethal control of wolves may be necessary to resolve repeated wolf-livestock

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conflicts and would be performed to remove problem animals that jeopardize public tolerance for overall wolf recovery."

4. Before lethal control of wolves is used, however, the Plan emphasizes it must be evaluated on a "case specific basis," with decisions based on a number of factors, including "pack history and size," "state listed status of wolves," and "extent of proactive management measures being used on the property." In addition, the Plan provides that wolves may only be killed if: (1) there are repeated wolf predations of livestock; (2) it is documented that livestock have clearly been killed by wolves; (3) nonlethal methods have been tried but failed to resolve the conflict; (4) predations are likely to continue; and (5) there is no evidence of intentional feeding or unnatural attraction of wolves. The EIS and the Plan specify that "[n]on-lethal management will be emphasized while the species is recovering" and that lethal control will be a "last resort." In line with this, the EIS and Plan emphasize the use of non-lethal strategies during wolf recovery, including "husbandry methods and non-lethal deterrents," such as "using range riders to help keep cattle more concentrated on grazing sites," "delaying turnout of cattle onto grazing sites until calving is finished or young wild ungulates are born," "allowing calves to reach at least 200 pounds before turning them out to grazing sites," and "avoiding grazing livestock near the core areas of wolf territories, especially dens and rendezvous sites."

5. For more than six years, WDFW has ignored these and other restrictions that the Plan placed on the potential use of lethal control, most recently with the Togo Pack Kill Order. Instead, WDFW has relied upon criteria for its kill orders that are not contemplated under the Plan or its EIS, but which have been spelled out in a series of informal "protocols" which form the basis for WDFW's wolf killing program. Specifically, the Togo Pack Kill Order purports to rely upon WDFW's 2017 Wolf-Livestock Interaction Protocol ("2017 Protocol). *See* Ex. A at 2 (indicating Susewind has initiated the "lethal removal provisions" of the "wolf-livestock interactions protocol").

6. In the five summer grazing seasons after adoption of the Plan, WDFW has killed 18 wolves from five packs, resulting in the near or total destruction of three packs. These actions

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eliminated up to 11% of the wolf population in any given year. WDFW killed 15 of these 18 wolves, and targeted three wolf packs for extermination, for the benefit of a single livestock owner.

7. WDFW has taken these actions in contradiction to its own conservation goals, abandoning the Plan's justification that killing wolves is necessary to save them. Instead, WDFW has targeted an endangered species at the behest of private commercial interests, willfully ignoring overwhelming scientific evidence demonstrating that killing wolves is both unnecessary and counterproductive—and that it actually results in increased conflicts between wolves and livestock.

8. WDFW's actions, including the Togo Pack Kill Order, violate SEPA because WDFW has departed from the limited lethal control contemplated by the Plan, instead undertaking a program to systematically and purposefully kill members of an endangered species—without performing a new or supplemental EIS, or even making a threshold determination as to whether one is required, which determination would be subject to direct challenge and review in the courts.

9. The Togo Pack Kill Order, and the 2017 Protocol on which it purportedly relies, is also arbitrary and capricious under the APA, because it is contrary to WDFW's rules and governing statutes, including the management guidelines set by the Plan; is not the product of a reasoned decision-making process; and is based on incomplete or erroneous facts—including a lack of consideration of the available science. In addition, the Togo Pack Kill Order is arbitrary and capricious because it does not follow the requirements of the 2017 Protocol on which it is purportedly based.

10. Petitioners thus seek a declaration that the Togo Pack Kill Order violated Washington law.

11. Petitioners additionally seek injunctive relief to prevent WDFW from executing the Togo Pack Kill Order, and to preclude it from issuing or acting upon any similar orders that have not met the requirements of SEPA and the APA.

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JURISDICTION AND VENUE

12. Jurisdiction is proper in this Court pursuant to RCW Chapters 7.24 (declaratory relief) and 7.40 (injunctive relief), RCW 34.05.570 (APA), and RCW 43.21C.075 (SEPA).

13. Venue is proper in this Court pursuant to RCW 4.92.010, RCW 35.05.514(1), and RCW 42.56.550.

PARTIES

Petitioners

14. Petitioner Center for Biological Diversity ("the Center") is a national, non-profit conservation organization with offices throughout the United States, including Washington, and more than 1.6 million members and supporters, many of whom reside in Washington. The Center is dedicated to the preservation, protection, and restoration of biodiversity, native species, and ecosystems. The Center and its members and supporters have a long-standing interest in the endangered gray wolf (*Canis lupus*), and routinely advocate for gray wolf protection in Washington. For example, the Center participated in developing the state's Plan, including attending multiple public meetings and submitting comments; regularly attended meetings of Washington's Wolf Advisory Group ("WAG"); filed multiple petitions asking WDFW to codify critical elements of the Plan into the Washington Administrative Code ("WAC"); and submitted numerous comments to WDFW regarding its lethal removal protocols, kill orders, predation investigations, and other actions related to wolf management.

15. Petitioner Cascadia Wildlands is an Oregon non-profit organization with approximately 10,000 members and supporters throughout the United States, including many who reside in Washington. Cascadia Wildlands educates, agitates, and inspires a movement to protect and restore Cascadia's wild ecosystems. Cascadia Wildlands envisions vast old-growth forests, rivers full of salmon, wolves howling in the backcountry, and vibrant communities sustained by the unique landscapes of the Cascadia Bioregion. Cascadia Wildlands and its members have worked to reform WDFW, and specifically, the agency's wolf management practices. Cascadia Wildlands and its members have been extensively involved in wolf

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management and the creation of wolf management policy in Washington. For example, Cascadia Wildlands and its members have routinely submitted comments and attended public meetings on wolf management; met and kept in contact with WDFW staff on the issue; drafted and filed numerous petitions asking that WDFW codify elements of the Plan to create agency accountability through enforceability; attended meetings of the WAG; and repeatedly offered comments on the development of lethal control protocols, kill orders, predation investigations, public disclosures, and other actions related to wolf management.

16. Many of Petitioners' members, supporters, and staff live in or near areas occupied by wolves in parts of Washington where the wolf has lost protection under the federal Endangered Species Act, or visit these areas for hiking, camping, photography, birdwatching, observing wildlife, and other recreational and professional pursuits.

17. Petitioners' members, supporters, and staff gain aesthetic enjoyment from observing, attempting to observe, hearing, seeing evidence of, and studying wild wolves, including observing signs of the species' presence in these areas, and observing ecosystems enhanced by these animals. The opportunity to possibly view wolves, or signs of wolves, in these areas is of significant interest and value to Petitioners' members, supporters, and staff, and increases their use and enjoyment of public lands. Petitioners' members, supporters, and staff have engaged in these activities in the past, and intend to do so again in the near future.

18. Petitioners, as well as their members, supporters, and staff, are dedicated to ensuring the long-term survival and recovery of the gray wolf throughout the contiguous United States, and specifically in the Pacific Northwest, and to ensuring that Respondents comply with all applicable state laws related to the survival and recovery of the gray wolf in Washington. In furtherance of these interests, Petitioners' members, supporters, and staff have worked, and continue to work, to conserve wolves in Washington and throughout the contiguous United States.

19. Petitioners' members, supporters, and staff have a procedural interest in ensuring that Respondents' activities comply with all applicable state statutes and regulations.

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Petitioners and their members, supporters, and staff have an interest in preventing Respondents from killing endangered gray wolves in contravention of applicable state statutes and regulations. The relief requested in this litigation would further that goal.

20. The interests of the Petitioners' members, supporters, and staff have been, and will continue to be, injured by Respondents' continued authorization of the lethal removal of wolves in Washington, including through the Togo Pack Kill Order, and any similar orders that may follow or currently be in place for other packs. The interests of Petitioners' members, supporters, and staff have been, and will continue to be, injured by Respondents' killing of wolves in Washington. The interests of Petitioners' members, supporters, and staff have been, and will continue to be, injured by Respondents' failure to comply with SEPA and the APA in authorizing and carrying out the killing of wolves in Washington.

21. The relief requested by Petitioners in this petition would redress or lessen the injuries of Petitioners' members, supporters, and staff. The relief requested by Petitioners, if granted, would prevent Respondents from engaging in killing endangered gray wolves until, and unless, they comply with state law. The relief requested by Petitioners, if granted, would reduce the number of endangered gray wolves killed by the state of Washington.

22. The mailing address for the Center for Biological Diversity is P.O. Box 469, Victor, ID 83455. The mailing address for Cascadia Wildlands is 1247 Willamette St., Eugene, OR 97401. Petitioners are represented by Claire Loebs Davis of Lane Powell PC, located at 1420 Fifth Avenue, Suite 4200, Seattle, WA 98101-2375, whose mailing address is P.O. Box 91302, Seattle, WA 98111-9402; by Jonathon Bashford of Bashford Law PLLC, located at 1700 Westlake Avenue North, Suite 200, Seattle, WA 98109, whose mailing address is P.O. Box 2285, Seattle, WA 98111-2285; and by Andrea Santarsiere of the Center, at P.O. Box 469, Victor, ID 83455.

Respondents

23. Respondent WDFW is an agency of the State of Washington, under the auspices of the Washington Fish and Wildlife Commission ("Commission"). WDFW is located in the

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Natural Resources Building at 1111 Washington Street S.E., Olympia, WA 98501, and its mailing address is P.O. Box 43200, Olympia, WA 98504-3200. The mission of WDFW is to "preserve, protect, and perpetuate wildlife and ecosystems while providing sustainable fish and wildlife recreational and commercial opportunities."[1] Its statutory purpose includes a command to "conserve the [state's] wildlife . . . resources in a manner that does not impair the resource." RCW 77.04.012. Under RCW 77.12.240, WDFW has the discretion to "authorize the removal or killing of wildlife that is destroying or injuring property," within the bounds of its other responsibilities under state law.

24. The Director of WDFW is required to investigate the distribution of wildlife species across the state. RCW 77.12.020(1). If WDFW determines a species to be "seriously threatened with extinction in the state of Washington," it may ask the Commission to designate that species as endangered. RCW 77.12.020(6). The Commission has the authority and duty to classify species to determine those requiring protection or management to ensure survival in Washington. RCW 77.12.020(1), (6). Once a species is listed as endangered, WDFW is required to write a species recovery plan that includes target population objectives, an implementation plan to reach those objectives, and criteria for delisting, education, and monitoring. WAC 220-610-110 §11.1. The gray wolf has been listed as endangered by the State of Washington since 1980. WAC 220-610-010; *see* former WAC 232-12-014 (1981); Wash. St. Reg. 81-12-029 (Jun. 1, 1981). As an endangered species, the gray wolf receives protection under state law from hunting and killing throughout the state, RCW 77.15.120; and its critical habitat is given certain legal protections. *See e.g.*, WAC 222-16-080(1)(a) (limiting forestry practices within one mile of a known den). Because gray wolves have been federally delisted as endangered in the eastern one-third of Washington, WDFW has full management authority over the species in that portion of the state.[2]

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[1] Washington Dep't of Fish and Wildlife, *Mission and Goals*, About WFDW, http://wdfw.wa.gov/about/mission_goals.html.

[2] Washington Dep't of Fish and Wildlife, *Gray Wolf Conservation and Management*, http://wdfw.wa.gov/conservation/gray_wolf/legal_status.html.

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25. Respondent Kelly Susewind is sued in his official capacity as the Director of WDFW, appointed by the Commission in accordance with RCW 77.04.055(7). The Director is required to "supervise the administration and operation of the department and perform the duties prescribed by law and delegated by the commission." RCW 77.04.080. Among other duties, the Director must investigate the distribution of wildlife species and make recommendations regarding the classification of endangered species, RCW 77.12.020; and oversee authorizations for trapping or killing wildlife found to be threatening human safety or damaging property. RCW 77.15.194(4); RCW 77.36.030(1). Director Susewind authorized the Togo Pack Kill Order.

26. Respondent Lisa Wood is sued in her official capacity as the SEPA Coordinator for WDFW. As WDFW's SEPA "responsible official," Wood is the person designated by the agency to carry out its duties and functions under SEPA guidelines, including its procedural responsibilities. WAC 197-11-788; WAC 197-11-910.

FACTUAL BACKGROUND

A. Gray Wolves are a Unique Species with Key Ecological Roles

27. The gray wolf (*Canis lupus*) is the largest member of the Canidae family. Adult gray wolves range in size from 40 to 175 pounds. A gray wolf's fur is frequently grizzled gray, but can vary from white to black. Gray wolves predominantly live in packs, which hunt, feed, travel, rest and rear pups together. A wolf pack is formed when a male and female wolf bond, breed, and produce pups. A wolf pack usually consists of a breeding pair of wolves, their offspring from the previous year, and new pups. A wolf pack may also have other breeding-aged adult wolves as members. Most packs produce only one litter each year. Litters are usually born in April, and usually consist of four to six pups. All pack members help feed, protect, and otherwise raise the pups. As wolf pups become adults, they may disperse from their pack to establish new home-territories and start new packs. Dispersing wolves can travel hundreds of miles before settling in a new territory and finding a mate.

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28. Wolves are highly social animals, and a wolf pack has a well-established social structure. At the top of the social structure are the breeding male and breeding female wolves, but other wolves play key roles in pack survival. When humans remove a wolf from a pack, pack structure and dynamics are disrupted, and the survival of the pack's pups may be endangered. Removal of the breeding male or breeding female from a pack is particularly disruptive and damaging. Larger packs are much more likely to be successful in breeding and raising pups, and when humans kill members of a pack and reduce pack size, it can reduce the reproductive success of the wolf population.

29. A pack establishes an annual home territory and defends it from other packs and trespassing wolves. From spring until fall, pack activity is centered around its den and rendezvous sites, as the adults hunt and bring food back to the pups. Rendezvous sites are specific areas that wolf packs use to rest, gather, and play after the pups emerge from the den.

30. As apex predators, wolves play a crucial role in the ecosystems where they live, having direct and indirect effects on multiple animal and plant species, and promoting biodiversity and ecosystem balance. The loss of apex predators was a major driver in the destabilization and collapse of certain ecosystems, leading to pandemics, incursions of invasive species, unsustainable increases in prey populations, and lost ecosystem functions. For example, the eradication of wolves likely produced a number of important ecological changes in Washington's Olympic National Park, where resultant over-browsing by elk caused substantial changes in riparian plant communities, including declines in black cottonwood and bigleaf maple, which in turn caused riverbank erosion and channel widening, and likely reduced the rearing habitat for salmon, steelhead, and resident fish.

31. Wolves are predominantly predators of medium and large-sized mammals, such as elk and deer, but are also known to hunt or feed on ground squirrels, hares, voles, insects, fish, and plant material. Gray wolves occasionally feed on livestock, but account for a tiny fraction of total livestock losses, even in areas such as Idaho, Montana, and Wyoming where more wolves reside. Statistics cited in the Plan indicate that during 2004 and 2005, wolves in

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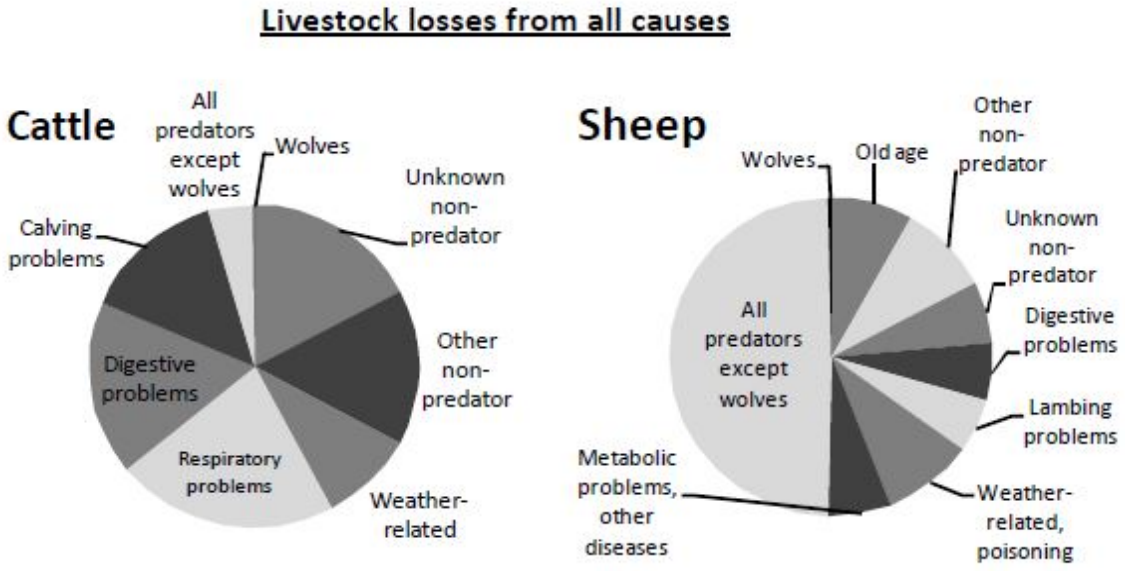
these states were responsible for less than 0.1% of cattle deaths and 0.6% of sheep deaths. The following chart used in the Plan illustrates the minimal role that wolves play in livestock losses:



32. Wolves pose virtually no safety threat to humans. n North America, where there are about 60,000 wolves, two human deaths have been attributed to wolves in the past 60 years, in Alaska and Saskatchewan. By comparison, about 18 people in the U.S. are killed by livestock each year, and 200 by car collisions with deer.

B. Gray Wolves are Exterminated in Washington, then Start a Comeback

33. Humans waged a devastatingly successful campaign to exterminate wolves in the United States from colonial times well into the twentieth century.

34. A robust population of wolves, numbering as many as 5,000, once ranged throughout nearly all of Washington, but a government-supported policy of eradication led to the near-extirpation of wolves from the state by the early 1900s. As in other states, Washington wolf populations were destroyed through trapping, poisoning, hunting, use of bounties, and government predator-eradication campaigns. Thus, wolves were eliminated from nearly the entire state by 1900.

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35. In 1974, the gray wolf was listed under the federal Endangered Species Act. This action started to halt the extinction of the species in the United States.

36. In 1980, the gray wolf was added to Washington's list of endangered species. By this time, there had been only occasional sightings of individual wolves, pairs, and tracks, as well as reports of howl vocalizations, generally in the Cascade Mountains and in some northeastern parts of Washington. However, there was no evidence that Washington had a resident breeding population at the time, and these sightings were likely dispersing animals from British Columbia or other states.

37. In 1990, the Commission adopted rules requiring WDFW to prepare a recovery and management plan for the gray wolf within 5 years. WAC 220-610-110 § 11.2.1; former WAC 232-12-297 (1990); Wash. St. Reg. 90-11-066 (May 15, 1990). Despite this requirement, WDFW did not begin the recovery and management plan process for the gray wolf until 2007.

38. In 1995-1996, wolves were reintroduced to Yellowstone National Park and central Idaho. This northern Rockies wolf population soon began to increase in size and expand in territory. t also became a source population for dispersing wolves, which began heading west into Washington in the early 2000s.

39. In 2002, a radio-collared female wolf crossed the border from Idaho into northeastern Washington. The remained there for several weeks before disappearing north into British Columbia. his was the first confirmed instance of any wolves moving westward into Washington from the northern Rockies population. Lone wolf sightings in northeastern Washington were reported in the ensuing years, and breeding pairs and packs gradually formed and established territories.

40. While the Plan development process was under way, more wolves dispersed into Washington from Idaho and British Columbia. In 2008, the state's first two wolf packs since the 1930s were confirmed. One pair, named the Diamond Pack, was first documented in 2008 in Pend Oreille County and confirmed to have pups in 2009 and 2010. Simultaneously,

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confirmation was made in Okanogan County of the Lookout Pack, which had litters in 2008 and 2009 (and probably also in 2007).

C. Washington Develops its Wolf Recovery Plan and EIS

41. In 2007, WDFW finally initiated development of the Plan—twelve years after it was supposed to be completed. WDFW issued a Determination of Significance in 2007, noting that WDFW had decided that the Plan may have a significant impact on the environment, and that an EIS was therefore required under RCW 43.21C.030(2)(c). A draft EIS was developed and underwent public review in 2009 and 2010.

42. The EIS reviewed the Plan as "a phased non-project review proposal." A "[p]hased review allows agencies and the public to focus on issues that are ready for decision and excludes from consideration issues that . . . are not yet ready." In its EIS, WDFW identified three "areas of controversy and uncertainty" with regard to the Plan. One of these "areas of controversy and uncertainty" is "wolf-livestock conflict management," including "lethal management options to address wolf-livestock conflicts." The EIS states that it considered "current and anticipated factors" that "could result from implementation of proposed management strategies," but contemplated further environmental review, providing in particular, "*Specific actions that may be proposed in the future relating to gray wolf management in Washington would be evaluated under a supplemental environmental impact statement process*."

43. WDFW convened a stakeholder group, representing diverse interests, to assist in development of the Plan. The 17 members of the stakeholder group met regularly over 15 months to identify, discuss, negotiate, and draft components of the Plan. The State held 23 public scoping meetings plus official comment periods that generated more than 65,000 comments by members of the public. Drafts of the Plan were peer-reviewed by 43 reviewers and 3 blind peer reviewers. In December 2011, the Commission formally adopted the Plan.

44. Public opinion polls at the time showed that 75% of Washingtonians supported wolf recovery.

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45. The Plan "serves as the state recovery plan" for gray wolves, and its goals include (1) "restor[ing] the wolf population in Washington to a self-sustaining size and geographic distribution that will result in wolves having a high probability of persisting in the state through the foreseeable future"; (2) "manag[ing] wolf-livestock conflicts in a way that minimizes livestock losses, while at the same time not negatively impacting the recovery or long-term perpetuation of a sustainable wolf population"; and (3) "develop[ing] public understanding of the conservation and management needs of wolves in Washington, thereby promoting the public's coexistence with the species."

46. The EIS that accompanied the Plan presented four alternatives for different approaches to wolf recovery. However, with regard to the state's lethal control of wolves involved in repeated livestock predations, all four alternatives simply provided that it was, "Allowed, consistent with state and federal law." The EIS noted that it was "unusual to include lethal management strategies in a plan for recovery of a listed species," but included lethal control as an option that may be necessary to "build public tolerance for wolves." It left lethal management strategies to be determined at a later date, noting that "[l]ethal control of wolves *may* be necessary to resolve repeated wolf-livestock conflicts" and "[i]mplementation of management options that include lethal control *would be* based on the status of wolves to ensure that conservation/recovery objectives are met."

47. The Plan also leaves the issue of the circumstances under which the state would kill wolves to be determined later, stating that "[l]ethal control of wolves may be necessary to resolve repeated wolf-livestock conflicts and is performed to remove problem animals that jeopardize public tolerance for overall wolf recovery." The strategy for lethal control in the Plan and EIS is summarized as follows:

> Lethal removal may be used to stop repeated predation if it is documented that livestock have clearly been killed by wolves, non-lethal methods have been tried but failed to resolve the conflict, predations are likely to continue, and there is no evidence of intentional feeding or unnatural attraction of wolves by the livestock owner. Situations will have to be evaluated on a case-specific basis, with management decisions based on pack history and size, pattern of predations, number of livestock killed, state listed status of wolves, extent of

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proactive management measures being used on the property, and other considerations.

48. The Plan does not define central terms such as "repeated livestock predations," "clearly been killed by wolves," or "unnatural attraction," and fails to describe any criteria for determining that "non-lethal methods have been tried but failed to resolve the conflict," when "depredations are likely to continue," or how management is supposed to take into account the listed considerations. The Plan specifically left for the future the "develop[ment] and implementation of a comprehensive program to manage wolf-livestock conflict."

49. The Plan states that "[n]on-lethal management techniques will be emphasized throughout the recovery period and beyond" as a response to wolf-livestock conflicts. It directs that WDFW "should manage conflicts in a way that gives livestock owners experiencing losses the tools to minimize losses, while at the same time not harming the recovery or long-term sustainability of wolf populations." The Plan provides that "WDFW will work with livestock producers to provide technical assistance on proactive, non-lethal management methods and technologies." The Plan lists husbandry techniques that are useful in avoiding wolf predation, including the use of range riders and sheepherders, burying of livestock carcasses, moving sick or injured livestock off grazing allotments, delaying the turnout of cattle until calving is finished or wild ungulates are born, allowing calves to reach at least 200 pounds before turning them out, and avoiding grazing livestock near wolf territory core areas, especially dens and rendezvous sites. The Plan also lists a number of non-lethal wolf deterrents, including the use of guard animals, light and noise scare devices, hazing with non-lethal munitions, predator-resistant fencing, and fladry (numerous strips of flagging hung along a fence or rope).

50. The Plan provides for generous compensation for livestock killed by wolves. Even if livestock are killed long before achieving marketable weight, livestock owners are paid full market value for each animal confirmed to have been killed by wolves and half the market value of an animal whose death is deemed a probable wolf kill. If the animals were killed on grazing sites of 100 or more acres, livestock owners receive double compensation, *i.e.*, they are

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paid full market value of two animals for a single confirmed wolf kill, and full market value of one animal for a probable kill.

51. The Plan's first listed objective is to develop a program to monitor the population status, trends, and conservation and management needs of wolves in Washington. Its second objective is to "[p]rotect wolves from sources of mortality and disturbance at den sites," with one goal to "minimize mortality from lethal control."

52. The Plan notes that "excessive levels of lethal removal can preclude the recovery of wolf populations," and discusses the need for constraints on lethal control to minimize negative impacts, including limiting it to killing solitary individuals or territorial packs whenever possible, and only killing animals in reproductive packs when pups are more than six months old, the packs contain at least six members, there are neighboring packs nearby, and the population is at least 75 wolves. The Plan also suggested managers should consider minimizing lethal control around core recovery areas, especially during the denning and pup-rearing period of April to September. The Plan directs that "managers should assess the potential negative impacts of wolf removal on pack structure and persistence for creating unstable pack dynamics if sink habitats [that is, lower quality habitats where resident packs have difficulty sustaining themselves without immigration from source habitats elsewhere] are created by depredation control, especially in recovering populations." Another strategy mandated by the Plan is to "minimize disturbance at active wolf den sites," including implementing suitable protective measures, and providing information to landowners about the location of den sites and how to avoid disturbing them.

53. The Plan's objectives also emphasize the need to "[c]onduct research on wolf biology, conservation and management in Washington," indicating that WDFW will initiate wolf research "if important management questions arise that could be answered through research and monitoring," including "on the levels and effects of depredation on livestock and other domestic animals, and the factors influencing depredation." It also notes the "strong need to conduct research on non-lethal control methods to reduce wolf depredation on livestock,"

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because such research is "essential" to any "successful wildlife conservation and management plan," and "[f]uture conservation and management actions involving Washington's gray wolves will depend on accurate and complete data related to a broad range of biological and social topics, including population status and impacts on affected resources and human activities."

54. The Plan acknowledges that a "well-informed public is essential to gray wolf conservation and some authorities consider outreach efforts to be the highest priority in restoring the species." It further explains that it is "crucial that wolves and wolf management issues be portrayed in an objective and unbiased manner, and that the public receives accurate information on the species. Conflicts with wolves and the solutions and compromises needed to resolve those conflicts must be discussed fairly."

55. The Plan indicated that wolves would be downlisted from state endangered to threatened status when there had been six successful breeding pairs for three consecutive years, with two successful breeding pairs in each of three separate recovery regions. Wolves would be downgraded from threatened to sensitive when there were 12 successful breeding pairs present for three consecutive years, with four successful breeding pairs in each of the three recovery regions; and would be removed from the list under either of two circumstances, as follows: (1) when there were 15 successful breeding pairs present for three consecutive years, with four successful breeding pairs in each of the three recovery regions and three successful breeding pairs anywhere in the state, or (2) when there were 18 successful breeding pairs, with four successful breeding pairs in each of the three recovery regions and six successful breeding pairs anywhere in the state. The Plan acknowledges that 15 breeding pairs, which represent an estimated 97-361 wolves, would be a "minimal objective to achieve recovery." In fact, two of the three blind peer reviewers said the recovery objectives in the Plan would be inadequate to achieve recovery. Comments to the EIS said the objectives were not biologically defensible, assumed that connectivity with viable wolf populations elsewhere would be maintained, and lacked a population viability analysis.

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56. A number of studies published before the Plan pointed to the need to take pack dynamics, social structure, and associated mortality rates into consideration when evaluating the impact of lethal control. *See* Scott Creel and Jay J. Rotella, *Meta-Analysis of Relationships between Human Offtake, Total Mortality and Population Dynamics of Gray Wolves*, 5 PLOS ONE e12918 (2010); Linda Y. Rutledge, et. al., *Protection from Harvesting Restores the Natural Social Structure of Eastern Wolf Packs*, 24 BIOLOGICAL CONSERVATION 332 (2009); Arian D. Wallach, et. al., *More than Mere Numbers: The Impact of Lethal Control on the Social Stability of a Top-Order Predator* 4 PLOS ONE e6861 (2009); Thomas M. Gehring, et. al., *Limits to Plasticity in Gray Wolf, Canis lupus, Pack Structure: Conservation Implications for Recovering Populations*, 117 CANADIAN FIELD-NATURALIST 419 (2003); John A. Vucetich, et. al., *Effects of Social Structure and Prey Dynamics on Extinction Risk in Gray Wolves*, 11 CONSERVATION BIOLOGY 957 (1997); Gordon C. Haber, *Biological, Conservation, and Ethical Implications of Exploiting and Controlling Wolves*, 10 CONSERVATION BIOLOGY 1068 (1996).

57. One such study, cited in the Plan, emphasizes the need for wildlife managers to carefully evaluate the possible impacts of lethal control on territorial wolves relative to ethical and biological considerations." Scott M. Brainerd, et. al, *The Effects of Breeder Loss on Wolves*, 72 THE JOURNAL OF WILDLIFE MANAGEMENT 89 (2008) ("Brainerd Study"). In particular, the Brainerd Study recommends that managers "prioritize the removal of solitary wolves or territorial packs," and exercise extreme caution when it is absolutely necessary to kill members of reproductive packs, so as to "minimize pup mortality, social disruption, and breeding interruption." Specifically, the Brainerd Study recommends (and the Plan acknowledges, in its discussion of strategies for minimizing mortality from lethal control) that managers only remove wolves from reproductive packs when pups are more than six months old and the packs contain six or more members, including three or more adults, and that ideally, such removals would only take place when the pack was close to neighboring packs and the wolf population was more than 75 wolves. From 2012 to the present, WDFW has repeatedly ignored these recommendations. In five of the six kill actions WDFW conducted between 2012-2017 – the

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Wedge Pack in 2012, the Huckleberry Pack in 2014, the Profanity Peak Pack in 2016, and the Smackout Pack in 2017 – wolves were killed when these packs had pups that were less than 6 months old. The kill actions in 2012 and 2014 were undertaken when the wolf population was far less than 75 individuals (annual end of year 2011 report noted 27 wolves, and annual end of year 2013 report noted 52 wolves).

58. Other studies published before the Plan had already started to challenge the efficacy of traditional lethal control programs as opposed to non-lethal deterrence measures, laying the foundation for the research that would emerge in the years to follow. *See* Elizabeth K. Harper, et. al., *Effectiveness of Lethal, Directed Wolf-Depredation Control in Minnesota*, 72 JOURNAL OF WILDLIFE MANAGEMENT 778 (2008) ("Harper Study"); *see also* Tyler Muhly, et. al, *Livestock Husbandry Practices Reduce Wolf Depredation Risk in Alberta Canada*, in THE WORLD OF WOLVES, NEW PERSPECTIVES ON ECOLOGY, BEHAVIOUR AND MANAGEMENT 263 (Marco Musiani, et. al., ed., 2010) (the "Muhly Study"); Marco Musiani, et. al., *Seasonality and Reoccurrence of Depredation and Wolf Control in Western North America,* 33 WILDLIFE SOCIETY BULLETIN 876 (2005).

D. Plan Addresses Concerns of Livestock Owners

59. WDFW quickly came under pressure from special interests opposed to wolf recovery, most significantly from certain livestock owners and groups that use public lands to graze their cattle and sheep during the summer. In 2016, beef cattle ranching amounted to one tenth of one percent (0.1%) of Washington's economy[3] and made up even less of the state's covered employment, providing 697 of the 3.2 million jobs in the state eligible for unemployment insurance.[4] There are so few sheep ranchers in Washington that neither data on covered employment nor 2016 statistics from the National Agricultural Statistics Service are

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[3] *Compare* National Agricultural Statistics Service, *Cattle, Incl. Calves - Gross Income, Measured in $*, Quick Stats, http://tinyurl.com/yceex5ld, *with* Washington State Dep't of Revenue, *Gross Business Income*, Statistics & Reports, http://tinyurl.com/yc7vu7l3.

[4] Washington Emp't Sec. Dep't, *2016 Annual Averages, Preliminary*, Quarterly Census of Employment and Wages, http://tinyurl.com/ycdo8ojb.

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available.[5] In 2010, sheep raising amounted to one one-thousandth of one percent (0.001%) of Washington's economy.[6]

60. While many Washington livestock producers rely entirely on private land for their annual operations, some livestock owners depend on public land grazing leases, primarily for cattle. These livestock owners typically keep their livestock on private land during the winter, with most calving and lambing occurring in late winter or early spring. In the spring, livestock are released to grazing allotments on state and federal public lands, often in remote locations with rough topography, such as the Colville National Forest. Livestock owners typically provide minimal to no supervision to these herds throughout the summer, and expect to suffer significant losses. In Washington, the Plan estimated that death losses from all causes totaled 44,000 cattle and calves in 2005 and 5,000 sheep and lambs in 2004, or 4.1% of all cattle and calves and 10.9% of all sheep and lambs. Producers lose livestock to a variety of natural and non-natural causes, including injury, illness, disease, weather, birthing problems, and predation. In Washington in 2004 and 2005, the Plan indicated that 94% of cattle losses, valued at $28.7 million, were non-predator related, and 54% of sheep losses, valued at $293,000, were non-predator related. Predators, primarily coyotes and cougars, killed an estimated 2,500 cattle and calves worth $1.53 million and 2,300 sheep and lambs worth $192,000.

61. In the fall, livestock owners gather up the livestock that has survived the summer, shipping most off to feedlots or slaughter, and returning the breeding stock to private land. According to the Plan, Washington public lands have 3.36 million acres set aside in 1,333 active grazing leases, with most on national forest lands. Overall, grazing occurs on about one-quarter of state and national lands managed by the U.S. Forest Service, the U.S. Bureau of Land Management, the Washington Department of Natural Resources, and WDFW; with the highest

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[5] *See* National Agricultural Statistics Service, *Sheep, Incl. Lambs - Gross Income, Measured in $*, Quick Stats, http://tinyurl.com/y7ovmx4n.

[6] *Compare* National Agricultural Statistics Service, *Sheep, Incl. Lambs - Gross Income, Measured in $*, Quick Stats, http://tinyurl.com/y7ovmx4n, *with* Washington State Dep't of Revenue, *Gross Business Income*, Statistics & Reports, http://tinyurl.com/yacpe9ct.

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incidence of public land grazing occurring in Colville National Forest, where more than 50% of the land is leased to livestock owners. In 2018, livestock owners pay $1.41 per month for each cow and calf that they graze on U.S. Forest Service lands.

62. Although significant portions of the Plan are devoted to concerns about effects on livestock owners, it correctly anticipated that wolves would be responsible for killing very small numbers of livestock. When the population reached about 100 wolves, WDFW predicted that wolves would kill between 2 and 12 cattle a year, valued at between $1,338 and $16,056, and between 14 and 35 sheep a year, valued at $1,920 to $4,795. When the population reached 300 wolves, the Plan anticipated that wolves would kill between 12 and 67 cattle each year, which would amount to less than 0.15% of total cattle losses, valued at $8,028 to $89,646 a year; and between 22 and 92 sheep, which would be less than 1.8% of total losses, valued at $3,010-$12,600. The Plan also noted that wolves may benefit some livestock operations by reducing the abundance of coyotes, which are responsible for 40% of confirmed calf death losses and 71% of lamb death losses to predators.

63. The Plan's predictions have been roughly accurate. Between 2013 and 2017, when the wolf population had between 51 and 122 wolves, WDFW confirmed that wolves killed a total of 27 cattle, or an average of 5.4 a year, and 28 sheep, or an average of 7 a year.

E. WDFW Immediate Deviates from Plan to Eliminate the Wedge Pack

64. WDFW started killing wolves less than a year after adopting the recovery Plan, targeting the Wedge Pack for elimination in 2012. WDFW killed seven of the eight members of the Wedge Pack, eliminating one of only eight confirmed packs in the state at the time, and killing 14% of the state's endangered wolf population.

65. WDFW eliminated the Wedge Pack at the behest of Diamond M Ranch, a livestock producer that has consistently refused to cooperate with WDFW in implementing non-lethal conflict-prevention measures, as required by the Plan, preferring to take losses from its herds and to demand that the state respond by eliminating the pack. In public statements to the

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media, representatives of the Diamond M Ranch have made clear their hatred for wolves, and disdain of government agencies and conservation efforts.

66. In July 2012, Diamond M claimed that wolves injured multiple cows and calves, and killed one calf, although WDFW investigators questioned whether wolves were involved in many of these incidents. The investigative reports show that in many cases, investigators were unable to draw a definitive conclusion about these attacks, and at least one attack was confirmed to have been by a cougar. For a calf killed on July 12, 2012, WDFW found "reasonable physical evidence" of wolf involvement, and on July 14, 2012, a WDFW investigator was "reasonably confident" that wolves had injured two additional calves.

67. During the third week of July 2012, Diamond M hosted a meeting of senior WDFW staff and elected officials, including Fish & Wildlife Commissioner Gary Douvia; WDFW Director Phil Anderson, Wildlife Program Director Nate Pamplin and Wolf Policy Lead Steve Pozzanghera; Stevens County Commissioner Don Dashiell; state legislators Sen. Bob Morton, Rep. Joel Kretz, and Rep. Shelly Short (from the 7th Legislative District, where Diamond M is located); and President of the Stevens County Cattleman Association Scott Nielson.

68. Following this meeting, WDFW made the decision to start killing wolves after Diamond M reported another injured calf on August 2, 2012—even though the responding WDFW investigator reported that he "did not believe it was a wolf encounter," and after consulting with another biologist, concluded that it "could not be confirmed as a wolf predation." Nevertheless, on August 7, 2012, WDFW authorized the killing of up to two of the Wedge wolves. Later that day, a WDFW sharpshooter killed one young female member of the Wedge Pack. In the following weeks, WDFW authorized the killing of up to four additional wolves, but its hunters on the ground were unable to locate additional wolves.

69. Many objected that these actions failed to adhere to the Plan that had just been adopted. For example, in late August 2012, Sen. Kevin Ranker, the Chair of the Washington State Senate Committee on Energy, Natural Resources and Marine Waters, sent a letter of

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inquiry to WDFW about its continued efforts to kill the Wedge wolves, emphasizing 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."

70. But WDFW ignored these pleas to return to the intent of the Plan, as Diamond M reported additional losses from its unattended livestock and pressured WDFW to kill more wolves. On August 21, for example, one of the proprietors of Diamond M called Commissioner Douvia, with whom he had met in July, to demand that WDFW take more action—telling Douvia that he had taken 20% of his cattle out of the Wedge area, but that he did not know the location of the remaining 80% of his herd. By September, WDFW claimed that the Wedge Pack had been responsible for 11 cattle injuries and 4 deaths, although it did not tell the public that it had been unable to confirm that wolves were responsible for many of these predations—or that the majority of these cattle were roaming through vast public lands with no human supervision or attempts at non-lethal deterrent measures.

71. On September 21, 2012, WDFW announced that it was targeting the entire Wedge Pack for removal, and called in helicopter sharpshooters to run down members of the pack and shoot them from the air. Over a three-day period, WDFW used the location data from the wolves that it had collared to kill six additional members of the pack, including the breeding pair, the alpha male and female. By the end, the state had killed seven wolves, or 14% of the wolves in the state, and eliminated one of only eight confirmed wolf packs. All that remained of the once thriving Wedge Pack was a single wolf. WDFW spent at least $77,000 to remove the Wedge Pack at the behest of a single uncooperative livestock owner, insisting that doing so was necessary to "lay a foundation for sustainable, long-term wolf recovery in the region."

72. In a September 28, 2012 letter to WDFW, Sen. Ranker said that the destruction of the entire Wedge Pack represented a "serious failure," and called on WDFW to take steps to ensure that it was not repeated. Sen. Ranker noted that while he was "gratified that numerous ranchers and other residents of northeast Washington have worked tirelessly with [WDFW] to

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avoid wildlife conflicts," he was concerned by the high number of attacks on "certain ranches" that refused to participate in prevention efforts. Wrote Ranker: "I fear that the Department's actions in the Wedge will be viewed by some who do not support wolf recovery as setting a precedent that localized public pressure can dictate wolf plan implementation, including lethal removal decisions."

F. WDFW Develops First "Protocol" for Wolf Killing Program

73. Following the elimination of the Wedge Pack, Plaintiffs and six other organizations filed administrative petitions requesting that WDFW go through rulemaking to adopt regulations on when it could kill endangered wolves. WDFW refused. Instead, the Commission granted WDFW's request to use an informal "protocol" and "flowchart" to guide its considerations for lethal removal, so it could retain "flexibility" in making these decisions. As a proxy for public involvement, the Commission decided WDFW would informally consult the WAG for nonbinding input on its protocols, and hired an independent facilitator to revisit the responsibilities of the WAG and coordinate WAG meetings. After extensive meetings with the facilitator that focused on the importance of process, developing relationships, and consensus, the WAG agreed to a "sufficient consensus" model, whereby each of the members of the WAG would agree to publicly support the group's decisions, even if they did not agree with them.

74. None of WDFW's "protocols" that WDFW subsequently developed in 2014, 2016 and 2016 to guide its wolf killing program were subjected to rulemaking, formal public review and comment, outside scientific assessment, or a SEPA environmental impact determination.

75. On January 1, 2014, WDFW released the "Protocol for Lethal Removal of Gray Wolves in Washington During Recovery" ("2014 Protocol") which it noted was "intended as advisement to WDFW." The 2014 Protocol largely attempted to parrot the Plan, including its statement that the purpose of lethal removal was to kill "offending wolves."

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76. The 2014 Protocol indicated WDFW would consider killing wolves when there had been between two and four livestock predations over a four-month time period, requiring that only one of those predations be a confirmed kill by a wolf, while the others could be suspected wolf attacks and injuries. The 2014 Protocol also provided that WDFW could extend the four-month time period to six months if it determined that predations had been "chronic or excessive."

77. Prior to killing wolves, the 2014 Protocol advised that WDFW should confirm that "essential non-lethal measures consistent with the Livestock-Wolf Mitigation Checklist" and the Plan "have been tried but failed to resolve the conflict, depredations are likely to continue, and there is no other evidence of intentional feeding or unnatural attraction of wolves by the livestock producer." The WAG did not agree to use of the 2014 Protocol, but rather than continuing discussion, WDFW unexpectedly released it on January 24, 2014.

G. WDFW Targets Wolves in Huckleberry Pack

78. Following the release of the 2014 Protocol, WDFW targeted the Huckleberry Pack for elimination, and succeeded in killing one wolf. WDFW targeted the pack in order to protect sheep belonging to a producer who had refused to cooperate with WDFW, and who left his sheep largely unsupervised to widely disperse in rugged, steep terrain in the middle of the Huckleberry Pack's territory.

79. On August 20, 2014, WDFW issued a permit allowing WDFW employees and the affected livestock producer to kill two wolves on sight. WDFW indicated at that point that it had confirmed that wolves had killed 16 sheep in four separate incidents, and that radio collar data had confirmed that at least one member of the Huckleberry Pack was at the site at the time.

80. On August 21, 2014, Petitioners and six other conservation organizations wrote to ask WDFW to rescind the kill order because it was "providing conflicting information about what measures are being taken; offers of feasible nonlethal methods that could be helpful are not being accepted; there have been lapses in sufficient staffing and vigilance; and an order for

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lethal control has been issued even though there hasn't been a wolf seen yet to try some nonlethal, injurious harassment tools already available on-site."

81. Just a day later, however, WDFW declared that the requirements of the 2014 Protocol had been met, and authorized lethal removal of up to four members of the Huckleberry Pack. WDFW contracted with a helicopter sharpshooter from U.S. Wildlife Services, providing them with instructions not to shoot the alpha male or female of the pack. On August 23, the sharpshooter shot and killed the pack's alpha female.

82. After failing in its efforts to shoot additional wolves, on August 26, 2014, Wildlife Services set leg traps to attempt to capture additional members of the pack. No wolves were captured by the traps, and no more sheep were killed. On August 29, Wildlife Services removed both the helicopter and the leg traps.

83. On September 17, 2014, the Stevens County Commissioners (including WAG member Don Dashiell), passed a resolution declaring that WDFW had "failed to honor its obligation," and informing it that if it did not return to kill the rest of the Huckleberry Pack, the Commissioners would "consider all available options to protect the residents of Stevens County, their families and their property." WDFW asked the Commissioners to rescind the resolution, but the Commissioners refused.

84. The Stevens County Cattlemen's Association estimated damage to the sheep herd would cost about $5,000, and WDFW paid Dave Dashiell compensation for his losses. Meanwhile, the Huckleberry operation cost the state a total of $53,000, with nearly $27,000 spent on the expenses to kill one wolf.

85. Following the Huckleberry Pack action, WDFW prepared a map in response to requests from a state legislator, which shows the unsupervised sheep had wandered far from the private timber company land where they were supposed to be grazing, and were instead on state Department of Natural Resources land, where the producer had no grazing rights. Indeed, 84% of the sheep that had purportedly been killed by wolves had wandered onto public lands where they were not authorized to be, and for which the livestock producer was paying no fees.

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H. U.S. Wildlife Services Enjoined From Participating in WDFW Wolf Kills Due to Lack of Appropriate Environmental Review

86. In March 2015, Cascadia Wildlands, along with three other environmental organizations, filed suit against U.S. Wildlife Services, alleging that it failed to do the proper review under the National Environmental Policy Act ("NEPA") before contracting with WDFW to kill members of the Huckleberry Pack. The suit challenged Wildlife Services' final Environmental Assessment for Wolf Damage Management in Washington, in which Wildlife Services made a Finding of No Significant Impact, authorizing Wildlife Services to contract with WDFW to kill wolves in eastern Washington.

87. The federal district court in Tacoma granted summary judgment in favor of the plaintiffs in December 2015, finding that Wildlife Services had failed to take the required "hard look" at the likely effects of lethal wolf removal on gray wolf populations and their ecosystems. *Cascadia Wildlands v. Woodruff*, 151 F. Supp. 3d 1153, 1164-67 (W.D. Wa. 2015). The court found that Wildlife Services could not rely on the EIS and Plan to kill wolves at the behest of WDFW. In particular, the court found that the Plan was not specific about when lethal versus non-lethal removal should be used, and did not specify the protocols to be used. It also found that the Plan was nonbinding and subject to changes or additions by WDFW. The court found that Wildlife Services was required by NEPA to conduct an Environmental Impact Statement because its actions killing wolves in Washington on behalf of WDFW were likely to be highly controversial and the effects were highly uncertain, particularly given the dispute within the scientific community regarding whether lethal wolf removal actually reduced livestock predation. The court also found that Wildlife Services had failed to consider the cumulative impact on wolf conservation and population management. It ordered that Wildlife Services stop participating in actions to kill wolves in Washington until and unless it completed the required Environmental Impact Statement.

88. During the 2015 grazing season, while the federal lawsuit was pending, WDFW considered further lethal action against the Huckleberry Pack after a dog guarding a sheep flock

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was injured in an encounter with a wolf. Because of the sheep predations in 2014, WDFW indicated its intent to re-initiate lethal control if there was another predation in 2015. However, non-lethal deterrents were successful in preventing any additional predations related to the Huckleberry Pack in 2015. Similarly, after WDFW reported four wolf-related predations of cattle by the Dirty Shirt Pack in 2015, it worked with the owner to implement non-lethal deterrents that successfully prevented additional predations.

I. Increasing Number of Studies Show Lethal Control is Not Effective

89. At the same time that WDFW was developing a new protocol to kill wolves and making attempts to kill members of the Huckleberry Pack, there was a wave of new scientific research that challenged the efficacy of lethal control policies, and found that non-lethal measures were both cheaper and more cost-effective at stopping predations. WDFW at best ignored, and at worst, actively tried to suppress, this research.

90. In 2013, a policy review was published that challenged the last 100 years of government policy of lethal control of wildlife to benefit livestock producers, finding that the policy damaged the ecosystem and was ineffective at reducing predation in the long term, and recommending that government agencies cease all lethal control in federal wilderness areas, and instead train livestock producers in non-lethal control methods. Bradley J. Bergstrom, et. al., *License to Kill: Reforming Federal Wildlife Control to Restore Biodiversity and Ecosystem Function*, 7 CONSERVATION LETTERS 131, 142 (2014).

91. On May 1, 2014, a study was published comparing the costs of lethal and non-lethal predator management, and finding that non-lethal mitigation can reduce predation and can be economically advantageous compared to lethal methods of predator control. J.S. McManus, et. al., *Dead or Alive? Comparing Costs and Benefits of Lethal and Non-Lethal Human-Wildlife Conflict Mitigation on Livestock Farms*, FAUNA & FLORA INTERNATIONAL 1 (2014) (the "McManus Study").

92. On May 2, 2014, a study was published questioning the assumption that intolerance for predators, including wolves, was tied to perceived threats to livelihoods, such

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as from livestock owners. The study suggested illegal poaching of predators was more influenced by social factors, and that negative attitudes that led to poaching may be reinforced, rather than decreased, by government-sanctioned predator killing. Adrian Treves and Jeremy Bruskotter, *Tolerance for Predatory Wildlife*, 344 Science 476, 476-77 (2014).

93. In 2014, under contract with WDFW, Western Wildlife Outreach prepared an annotated scientific literature review that annotated over 50 peer-reviewed papers related to the topic of reducing and avoiding conflicts livestock and wolves. The report includes extensive recommendations as to measures that it determined would be most effective in Washington, and is available on WDFW's website.[7] The consensus of these studies was that nonlethal methods, when used appropriately, provide the best method for reducing and avoiding wolf-livestock conflict. The research found that livestock were a secondary prey source for wolves, and were killed opportunistically when they were encountered. Specifically, it observed that researchers had demonstrated that livestock proximity to den location correlated with higher wolf predations, and recommended management strategies to move livestock away from wolf core areas, especially denning and rendezvous areas. The primary finding of the Western Wildlife Outreach literature review was that site and operational factors needed to be considered for each individual livestock operation in order for non-lethal deterrents to be effectively deployed.

94. On October 29, 2014, the University of Washington co-hosted a discussion panel with the Pacific Wolf Coalition, which brought together scientists from around the country.[8] Several members of the Commission, WDFW employees, and elected officials attended the October 2014 symposium, and WDFW Wolf Policy Lead Donny Martorello spoke at the opening of the panel, describing the status of wolves in Washington. Dr. Robert Wielgus,

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[7] L. Smith and J. Hutchinson, *Living with Livestock & Wolves, Wolf-Livestock nonlethal Conflict Avoidance: A review of the Literature*, available at https://wdfw.wa.gov/conservation/gray_wolf/livestock/wolf_livestock_conflict_avoidance_literature_review_11_2014_final_submitted_version.pdf.

[8] A video of the panel is available at http://www.pacificwolves.org/videos/.

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director of WSU's Large Carnivore Conservation Lab, discussed his recent study, which found that there was a 5% increase in predation for both cattle and sheep for every wolf that was killed. Dr. Douglas Smith, from Yellowstone National Park, concluded that killing wolves reduces social cohesion in packs and causes wolves to disperse, and that dispersing wolves and smaller packs are more likely to hunt livestock. Dr. Adrian Treves, from the University of Wisconsin-Madison, discussed his studies that found that lethal removal actions in Michigan actually shortened the period between subsequent predations.

95. Based on the panel discussion, a subsequent white paper concluded that the WAG would benefit from regular consultation with outside scientists, and might consider expanding its membership to include at least one wolf researcher. The white paper further suggested that Washington should rethink how lethal control was implemented, including focusing on time and location recommendations for decreasing the impact of lethal removal, and making it mandatory for livestock owners to implement site-specific conflict prevention plans before lethal control is undertaken.

96. On December 3, 2014, Wielgus published "Effects of Wolf Mortality on Livestock Depredations" ("Wielgus Study"), following review by WDFW, which had funded the research. The Wielgus Study assessed the effects of wolf mortality on reducing livestock predations in Idaho, Montana, and Wyoming from 1987 to 2012, and found that, contrary to expectations, increased wolf mortality was positively associated with an increase in predations the following year. The trend continued with a 5 to 6% increase in cattle predations for every wolf killed, until wolf mortality exceeded the wolf population growth rate of 25%—a level that was unsustainable for continued wolf populations. Wielgus indicated that one reason for the link between wolf killing and livestock predation might be that killing wolves caused pack instability, which caused the dispersal of wolves and allowed for an increase in the number of breeding pairs.

97. The Wielgus Study was heralded nationwide as a significant advance in the understanding of the effects of lethal control. For example, *National Geographic* reported that

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the Wielgus Study "flies in the face of the common idea that the swiftest and surest way to deal with wolves threatening livestock is by shooting the predators," and "adds to a growing understanding of how humans influence the complex dynamics driving these pack animals, sometimes with unexpected consequences."[9]

98. Wielgus's 2014 paper also provoked furious backlash from those who wanted to see WDFW continue killing wolves. In a December 3, 2014 *New York Times* article, a spokesperson for the Stevens County Cattlemen's Association said the study was "shameful" and "not clean science," and accused it of having a predetermined pro-wolf conclusion because it was funded by WDFW.[10] As a result of pressure from Rep. Joel Kretz over the study, WSU stopped publicizing Wielgus's work, and ultimately agreed with Kretz and WDFW to take Wielgus's name off of WSU's continuing grants for wolf research in exchange for continued funding. Following a demand by Kretz that Wielgus be investigated for scientific misconduct, however, WSU ultimately refused. After an independent review of Wielgus's research by the director of the Center for Interdisciplinary Statistical Education and Research, the university concluded there was "no evidence of research misconduct."

99. Although Wielgus had regularly appeared before the WAG, WDFW and the legislature to discuss the ongoing research that WDFW was funding on interactions between wolves and livestock, after the Wielgus Study was published, he was not invited back.

100. Instead of asking Wielgus to discuss the research that WDFW had funded, on September 25, 2014, WDFW invited Elizabeth Bradley from Montana Fish, Wildlife and Parks to speak to the WAG. Bradley described the results of a forthcoming study, which she said found that removal of entire packs would decrease predations for a while, but that partial pack removal was not effective. On July 6, 2015, Bradley published the article that she had previewed

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[9] Warren Cornwall, *Why Killing Wolves Might Not Save Livestock*, National Geographic, Dec. 3, 2014, http://news.nationalgeographic.com/news/2014/12/141203-wolves-hunting-livestock-ranchers-endangered-species-environment/

[10] Kirk Johnson, *Study Faults Efforts at Wolf Management*, New York Times, Dec. 3, 2014, https://www.nytimes.com/2014/12/04/us/washington-state-study-faults-efforts-at-wolf-management.html.

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for the WAG ("Bradley Study"). It looked at statistics from Montana, Idaho, and Wyoming from 1989 to 2009, to study the effects on predation of no action, partial pack removal, and full pack removal. Bradley found that killing entire packs significantly reduced predations in a localized area. She found that partial pack removal was somewhat more effective than no action if performed within the first seven days of a predation, but after that time, there was only a marginal difference, with no difference at all if it was conducted after 14 days following a predation. Her study did not examine whether any difference that she detected was due to the increased human presence that came with partial pack removal, or whether there would have been the same, or a more significant, decrease in predations if non-lethal deterrents were used. In an interview on January 25, 2016, Bradley emphasized her opinion that removing "one [wolf] here and one there" was ineffective, and that it was better to immediately kill entire packs in response to predations.[11]

101. On January 1, 2016, researchers in Italy published a study that examined why wolves predated on livestock, and found that the rate of predation was decreased by the presence of stable packs, instead of dispersing wolves; the adoption of non-lethal preventative measures by livestock owners; and the availability of other prey. The research suggested that wolf management focus on increasing prey abundance and non-lethal deterrents in lieu of using lethal controls. Camille Imbert, et. al., *Why Do Wolves Eat Livestock? Factors Influencing Wolf Diet in Northern Italy,* 195 BIOLOGICAL CONSERVATION 156, 156-68 (2016).

102. On May 11, 2016, Adrian Treves and Guillaume Chapron published a study examining the hypothesis used by many wolf management programs that state-sponsored wolf culls were necessary to control poaching and improve public acceptance of wolf populations. Looking at wolf populations and policy in Wisconsin and Michigan, they found state lethal control actually increased poaching and decreased social acceptance of wolves. The authors wrote: "When the government kills a protected species, the perceived value of each individual

[11] Andy Walgamott, *Another 'Counterintuitive' Study on Wolf Depredations*, Northwest Sportsman Magazine, Jan. 25, 2016, http://nwsportsmanmag.com/wolf-news/another-counterintuitive-study-wolf-depredations/.

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of that species may decline. Liberalized wolf culling may have sent a negative message about the value of wolves or that poaching prohibitions would not be enforced." Adrian Treves & Guillaume Chapron, *Blood Does Not Buy Goodwill: Allowing Culling Increases Poaching of a Large Carnivore*, 283 PROC. R. SOC. B 1, 5 (2016) ("Chapron/Treves Study").

103. Treves co-authored another study published on September 1, 2016, which surveyed the scientific literature to date, and found there was little evidence that killing predators accomplishes the goal of protecting livestock. Treves found that the studies of non-lethal methods of control applied higher standards of evidence than the tests of lethal predator control, and that "non-lethal methods were more effective than lethal methods in preventing carnivore predation on livestock generally" and were not shown to have any negative effects, while studies showed that both government culling and public hunting "were followed by increases in predation on livestock." Adrian Treves, et al., *Predator Control Should Not Be a Shot in the Dark*, 14 FRONTIERS IN ECOLOGY & ENV'T 380, 380 (2016) ("Treves Study"). The Treves Study recommended suspending lethal predator control methods until tests were completed that showed that they had effectiveness in preventing livestock loss.

104. Once again, this study was recognized as bringing an important shift to wolf management programs. *National Geographic* proclaimed that "The Case for Mass Slaughter of Predators Just Got Weaker," specifically mentioning that the Treves Study challenged WDFW's rationale for authorizing the removal of the Profanity Peak Pack in order to decrease wolf predation.[12] The article quoted Doug Smith, a senior wildlife biologist with Yellowstone National Park, who said the Treves Study filled a gap in the understanding of lethal control methods and it was "about time that lethal and nonlethal control had a critical evaluation." Smith also pointed out that it would be difficult to persuade livestock owners to shift away from lethal control because it was a quick and easy fix with short-term results.

[12] Jani Actman, *The Case for Mass Slaughter of Predators Just Got Weaker*, National Geographic¸ September 1, 2016, http://news.nationalgeographic.com/2016/09/wildlife-lethal-nonlethal-predator-control-hunting-evidence/.

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105. In February 2017, the *Journal of Mammalogy* published a special feature presenting data showing that "nonlethal methods of preventing depredation of livestock by large carnivores may be more effective, more defensible on ecological, legal, and wildlife-policy grounds, and more tolerated by society than lethal methods." Bradley J. Bergstrom, *Carnivore Conservation: Shifting the Paradigm From Control to Coexistence*, 98 JOURNAL OF MAMMALOGY 1, 1 (2017). The special feature included a study based on seven years of research on non-lethal deterrence measures to protect sheep herds in Idaho, which found that sheep losses were 3.5 times higher in areas that did not use the deterrence measures, and that when deterrence measures were used without killing wolves, sheep predation losses decreased to just 0.02% of the total sheep present, the lowest loss rate statewide. Suzanne Stone, et al., *Adaptive Use of Nonlethal Strategies for Minimizing Wolf-Sheep Conflict in Idaho*, 98 JOURNAL OF MAMMALOGY 33, 33 (2017). The special issue also included a study of predator control in Australia, which found that "ending lethal control may in itself reduce livestock losses by enabling the predator's social structure to stabilize," and a study related to the hunting of wolves in Michigan, which found that hunting did not reduce threats to livestock or human safety, or meet any standards for wildlife management. Arian D. Wallach, et al., *Cattle Mortality on a Predator Friendly Station in Central Australia*, 98 JOURNAL OF MAMMALOGY 45, 45 (2017); John A. Vucetich, et al., *Evaluating the Principles of Wildlife Conservation: a Case Study of Wolf (Canis Lupus) Hunting in Michigan, United States*, 98 JOURNAL OF MAMMALOGY 53, 53 (2017).

106. WDFW willfully ignored the mounting research demonstrating that killing wolves would not help it to either achieve conservation goals or limit livestock losses. Although it had funded the Wielgus Study, and reviewed it before publication, after it saw the backlash from livestock producers, it pretended the study did not exist. Under increasing pressure to take the developing science into account, the Commission eventually directed WDFW to prepare a "science panel" at a Commission hearing to discuss wolf management. However, WDFW refused requests to ask an independent third party to empanel experts for the presentation, to

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produce a white paper that would be subject to peer review, or to allow public and expert comment on WDFW's conclusions.

107. Instead, WDFW staff, led by Martorello, gave a science presentation on February 10, 2017 that included no input from third-party experts ("February 2017 Panel"). Although the posted minutes from this Commission meeting indicate that WDFW staff briefed the Commission on "the body of wolf science," in fact the February 2017 Panel only reported on six studies. Dozens of relevant studies, including many mentioned above, were missing from the discussion. Most notably, the February 2017 Panel ignored substantial research that WDFW had funded, and which was contemplated by the Plan as essential: there was no mention of any of the intensive work WDFW had funded through the WSU Large Carnivore Lab, including the Wielgus Study, or of the comprehensive literature review and recommendations on wolf-livestock conflict avoidance that Western Wildlife Outreach had performed under contract with WDFW.

108. Nevertheless, the February 2017 Panel did consider some studies that caused WDFW to acknowledge the need to reevaluate its program. During the panel, Martorello gave a presentation on the Chapron/Treves Study, which upended the old conventional (but unsupported) wisdom that state-sponsored lethal control was necessary to maintain social tolerance of wolves. Martorello said the study compelled WDFW to question the goal of lethal removal: "Is it tolerance? Is it to minimize reoccurring depredations? What is it? Where do we have the science to back up what that goal is?" Martorello also discussed the Treves Study, which found the research supporting the effectiveness of lethal control was so substandard it did not support current policies. Based on this study, he similarly concluded that WDFW needed to "really hone in" on its objective for lethal removal.

J. WDFW Issues 2016 Kill Protocol

109. Unfortunately, WDFW has refused to this day to conduct the reevaluation of its policies that Martorello conceded was necessary during the February 2017 Panel. Instead, WDFW has continued its wolf killing program under the guise of new protocols, which shift

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the justification for killing wolves farther and farther away from the purposes contemplated by the Plan.

110. On May 31, 2016, WDFW issued a new "Protocol for consideration and implementation of lethal removal of gray wolves during recovery to stop wolf depredation on livestock" ("2016 Protocol"). WDFW ignored objections from some members of the WAG in releasing the 2016 Protocol, falsely proclaiming that the WAG had unanimously agreed to support the protocol, and that it thus "represents input and considerations from numerous individuals representing Department staff, livestock, producer, environmental, and hunter interests." The 2016 Protocol provided that WDFW may kill wolves to stop predations on livestock if it had documented:

> 1) four or more confirmed wolf predation events within a calendar year, or six or more within two consecutive years;
>
> 2) at least one confirmed predation resulted in the death of livestock;
>
> 3) the producer had used proper sanitation procedures to remove carcasses that would attract wolves, as well as one proactive non-lethal deterrent measure that had been in place a sufficient amount of time prior to a confirmed predation;
>
> 4) WDFW expects predations to continue; and
>
> 5) WDFW has notified the public of the chronology of events leading to the kill order, including all confirmed wolf predations and the non-lethal deterrence measures that had been used.

111. The 2016 Protocol shifted away from the purposes of lethal control in the Plan and EIS. Instead of targeting "problem wolves" to secure "social tolerance," the 2016 Protocol indicated that it aimed to "stop depredations from continuing in the near future." The 2016 Protocol stated that the objective of killing wolves was to "stop livestock depredations by removing as few wolves as possible," and that ideally WDFW would start out with killing just one or two wolves, then progress to partial pack removal, before making a decision to kill the entire pack. However, it noted that WDFW "has full discretion on how many wolves to remove."

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112. The 2016 Protocol did not undergo any outside scientific assessment, and WDFW did not conduct any analysis of whether lethal control would be effective at reducing livestock predations. Nor did it weigh the effectiveness of lethal versus non-lethal control after predations occurred; look at the effects of lethal control on wolf ecology, reproduction and pack dynamics; examine whether killing wolves decreased social tolerance for them; analyze the importance of keeping livestock away from core wolf areas such as den or rendezvous sites; or consider whether there should be different thresholds for killings wolves on public versus private lands.

K. WDFW Targets Profanity Peak Pack for Destruction

113. In August 2016, WDFW once again targeted an entire wolf pack for extermination at the behest of the Diamond M Ranch, against the recommendations of WSU wildlife biologists who were working with wolves and livestock in that area. WDFW all but destroyed the Profanity Peak Pack by killing seven of its 11 wolves, or about 10% of the state's confirmed wolf population at the time. Once again, Diamond M had refused to use effective deterrent measures and declined the state's offer to compensate it for its losses. But this time, the evidence also shows that Diamond M had knowingly provided an "unnatural attraction" to the wolves, by placing salt blocks for its livestock within 200 yards of the wolf den, and leaving them there for several weeks after it knew the salt blocks were causing its cattle to swarm around the den location. Records produced in response to public disclosure requests indicate the salt blocks were only moved because WDFW had placed traps near the den to kill wolves, and was afraid the cattle milling around the den would get caught by them.

114. In 2014, the Profanity Peak Pack was first documented in the area of a 30,000-acre tract of remote and rugged land in the Colville National Forest where Diamond M grazes its cattle. In the spring of 2016, the pack was estimated to consist of six adult wolves, including a successful breeding pair, and five new pups. Earlier that year, the female wolf in the Profanity Peak Pack that WDFW had outfitted with a radio collar had left the pack and paired with a male to form the new Sherman Pack. This temporarily left WDFW without a collared wolf in the

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Profanity Peak Pack, but on June 9 and 12, WDFW captured and collared an adult male and an adult female belonging to the pack.

115. Diamond M turned its cattle out onto its grazing allotment between June 8 and 10, 2016, at which time the current den site of the Profanity Peak Pack was unknown. By the end of June, however, WDFW had confirmed the pack's den site. WDFW was aided in this determination by a team of WSU researchers, who were in the area researching cattle-wolf interactions, and monitoring both collared wolves and collared cattle from cooperating ranches. According to the *Seattle Times*, WDFW informed Diamond M of the den site almost immediately, while Diamond M independently found the den site at almost the same time.[13]

116. Through the WSU research team, WDFW also knew by the end of June that the Profanity Peak den was within 200 yards of where Diamond M had placed salt blocks for its cattle, causing cattle to congregate in the immediate vicinity of the den and a nearby rendezvous site. WSU cameras filmed the wolves and their pups frolicking in the area next to the den within days, hours, and sometimes even minutes of cattle traversing the same path in search of the salt.[14] A WGU graduate student wrote in his thesis that "everywhere [the Profanity Peak] wolves went there were cattle," and noted that the pack started to kill cattle only after the cattle had been overwhelming its den and rendezvous site for days.

117. Despite their knowledge of this proximity, however, neither WDFW nor Diamond M took any steps to move the salt blocks, to move the cattle, or to deploy more people to watch the cattle. At the time, Diamond M staff only checked on the cattle a couple of times a week.

118. On July 8, 2016, a WDFW staff member found a dead calf belonging to Diamond M, and WDFW confirmed that the calf had been killed by wolves. Following the first predation, Wielgus, who was leading the WSU team, called Martorello multiple times to urge

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[13] Lynda V. Mapes, *A War Over Wolves: Outspoken Researcher Says His University and Lawmakers Silenced and Punished Him*, Seattle Times, http://projects.seattletimes.com/2017/wsu-wolf-researcher-wielgus/?utm_source=email_share&utm_medium=email&utm_campaign=projects.

[14] *See* https://www.youtube.com/watch?v=9umv3j1yBP4.

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him to take action to have the salt blocks removed before they created further conflict. Yet the salt blocks stayed in place.

119. In its final report on the Profanity Peak operation, released on January 12, 2017, WDFW said that following the first predation, it reviewed Diamond M's procedures and found that they met the expectations for "proactive deterrence measures" under the 2016 Protocol. This finding did not mention the fact that Diamond M had turned its cattle out onto a vast and rugged landscape with virtually no supervision, had kept salt blocks in the immediate area of the wolf den, and had taken no action to herd its cattle away from the den.

120. Instead, WDFW maintained that it had determined that Diamond M had met the criteria for proactive deterrence measures because it had waited to turn out its calves until they were over 200 pounds and less vulnerable. But WDFW knew this was not true. In an internal email written on July 15, 2016, Martorello indicated that Diamond M's calves were "early born, so calf weights at turnout were generally at or above 200 lbs.," but admitted that "some calves were below this weight." The reports from WDFW's predation investigations show that many of the Diamond M calves killed by wolves throughout July were just around, or even below, 200 pounds, even after they had been grazing for four to six weeks.

121. In the chronology of events maintained on its website, WDFW also maintained that Diamond M had satisfied the 2016 Protocol's "sanitation requirement" by *allowing WDFW* to remove the calf carcass it had found on July 8, 2017. But, as Martorello acknowledged in a phone conversation, removing carcasses *after* a predation is not the proactive sanitation the protocol envisioned, which requires livestock owners to remove carcasses of livestock that have died from any cause in order to not attract wolves in the first place. WDFW was vague when asked whether carcasses of other cows and calves were regularly removed from the allotment, which it described as "dense and rugged," with only one road access point.

122. WDFW also reported that the ranch had staff on the allotment about twice a week, and that Diamond M was arranging for some additional hands to help monitor its herds. In the chronology of events, WDFW reported that Diamond M had hired two additional people

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to patrol the range by "horseback and/or foot." However, it told the WAG on September 2, 2016, that these people were just attempting to navigate the 30,000-acre parcel on foot. WDFW did not make clear how often these people were present, or whether they were there to deter wolves, or just to move cattle around the allotment.

123. Finally, WDFW reported in its chronology that a single range rider was deployed onto the 30,000-acre allotment on July 12, 2016. But there was also no indication that a single range rider was able to create any significant human presence in the vast territory. To the contrary, it appears the range rider was not monitoring the herd very closely, because the vast majority of dead cattle were found by WDFW staff, not by the range rider or ranch staff. Indeed, WDFW records indicate WDFW staff were directed to monitor GPS data point clusters from the collared wolves to attempt to discover more dead cattle, rather than using the collar information to try to prevent conflicts.

124. Between July 12 and July 23, there were one additional confirmed and three additional probable wolf predations of Diamond M cattle, and one confirmed predation of another livestock owner's cattle on a nearby grazing allotment. On August 3, WDFW reported the fourth and fifth confirmed cattle deaths, both Diamond M calves. WDFW responded by directing a "partial pack removal," authorizing up to two adults and three pups of the Profanity Peak Pack to be killed. On August 5, a helicopter sharpshooter shot and killed two adult female wolves, including the pack's breeding female.

125. Diamond M's range rider finally moved the salt blocks away from the wolf den on August 8, 2016—more than five weeks after the location of the wolf den was known, a month after the first calf was found dead, and three days after WDFW started killing Profanity Peak wolves. Indeed, WDFW only asked Diamond M to move the salt block after it started trapping wolves—in part because WDFW was worried that the traps would catch cattle instead. However, WSU researchers observed that even after the salt blocks were removed, the cattle continued to return to the area to search for them and to lick salt on the ground, and Diamond M took no action to move them away from the den to another pasture within the allotment.

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126. Meanwhile, WDFW conducted additional trapping and hunting operations through August 18, but was unable to kill more wolves due to difficulties with the rugged terrain and heavy timber. After 16 days passed without another cattle predation, WDFW suspended the kill order on August 18.

127. On August 19, WDFW documented two confirmed and two probable wolf predations, all of Diamond M calves. In response, WDFW issued an order to kill all the remaining nine wolves in the Profanity Peak Pack. Over the next two days, helicopter gunners killed two adult males and a female pup, and mortally wounded an adult female. WDFW reported in an email advisory that a wolf had been shot but her body could not be found, yet assured the public that she had been humanely killed. However, the mortally wounded female wolf was found three days later dragging her legs, and was only then put out of her misery.

128. WDFW confirmed additional predations on August 31, September 27, and October 3, bringing the total to ten confirmed and five probable predations. WDFW killed an adult male wolf on September 28, bringing the total number of dead wolves to seven. WDFW continued unsuccessfully to try to kill the remaining four members of the pack through October 19, using helicopter and ground operations and hiring a local trapper. It suspended the killing operation on October 19, because most of the cattle had been moved off the national forest lands. One adult female and three pups escaped WDFW's sharpshooters, although biologists speculated that with the pack decimated, the three pups might have died of starvation. By 2017, WDFW indicated that the Profanity Peak Pack had disappeared. WDFW spent at least $134,999 in its efforts to exterminate the Profanity Peak Pack.

L. WDFW Hides the Facts of its Profanity Peak Operation

129. While feigning openness, WDFW worked hard to obscure the facts throughout the Profanity Peak kill operation, avoiding direct answers, telling a series of half-truths, and facilitating attacks on a scientist who revealed the facts it was trying to hide. As described above, WDFW had issued a number of false and misleading statements about Diamond M's supposed "deterrence measures." In addition, WDFW went to great lengths to hide information

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about the salt blocks, their proximity to the wolf den, and what it had known about this issue at the time of the predations.

130. At various times, WDFW claimed it did not know the location of the pack's den until the end of summer. However, in a September 2, 2016, email update on the Profanity Peak operation, Martorello informed the WAG that WDFW knew by the end of June that the Profanity Peak den was four to five miles from the cattle turnout area, and that "as cattle continued to disperse through the allotment they inevitably crossed paths with the den site and later with rendezvous sites." Martorello further advised that: "In one situation, the wolf rendezvous site overlapped with part of the normal grazing path, where livestock were concentrated with the use of salt blocks. Once that overlap was detected, the Department contacted the producer, who removed the salt blocks from the area." WDFW did not disclose, to either the public or the WAG, that (1) the salt block was actually *within 200 meters of the den*; (2) it knew of this proximity by the end of June; (3) wolves only started killing cattle after the salt caused cattle to congregate at the den; and (4) neither WDFW nor the producer took any action to move the salt or the cattle until the kill order was already being implemented.

131. The location of the salt blocks only became public knowledge because it was exposed by WGU Professor Rob Wielgus. In an interview with the *Seattle Times* on August 25, 2016, about the Profanity Peak situation, Wielgus said, "This livestock operator elected to put his livestock directly on top of their den site; we have pictures of cows swamping it, I just want people to know."[15] Wielgus said that it was both "predictable and avoidable" that the Profanity Peak Pack would start killing cattle after the cattle were left to mill around its den site.

132. The comment provoked another intense backlash. Rep. Kretz told the *Seattle Times* that Wielgus "ought to be drawn and quartered and a chunk of him left everywhere in the district."[16] Martorello contacted WSU and dictated text for a press release issued on

[15] Lynda V. Mapes, *Profanity Peak Wolf Pack in State's Gun Sights After Rancher Turns out Cattle on Den*, Seattle Times, Aug. 25, 2016, http://www.seattletimes.com/seattle-news/environment/profanity-peak-wolf-pack-in-states-gun-sights-after-rancher-turns-out-cattle-on-den/.

[16] *Id.*

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August 31, 2016. The press release "disavowed" Wielgus's statements to the *Seattle Times*, called them "inaccurate and inappropriate," and falsely claimed that Wielgus had "subsequently acknowledged" that the statements "had no basis in fact."[17] Although he helped write the statement, Martorello refused WSU's request for WDFW to release it jointly.

133. Nevertheless, Martorello referenced and linked to WSU's statement in an email to WAG members that he sent out two days later, in order to "make sure" the WAG members were aware of the development. Meanwhile, Wielgus made no further comments because he had been forbidden by WSU from having any further contact with the media.

134. Following this incident, WDFW funding for large carnivore studies was diverted from WSU to the University of Washington, including the removal of funding for research that was already under way.

135. Despite the fact that members of the WAG specifically asked WDFW at a September 15, 2016, meeting to address the salt blocks in its final agency report on Profanity Peak released in January 2017, the report makes no mention of the issue. All the report said about the overlap between cattle and wolves was that a WDFW biologist had collared wolves "about two miles" from cattle, and by the end of June, WDFW had confirmed that the pack's new den was four to five miles from where Diamond M turned out its cattle. Thus completely ignoring the salt block issue, the report concluded Diamond M had "met the expectations for non-lethal deterrence" outlined in the Plan and the 2016 Protocol. The report did not mention that the kill operation violated the Plan's *second* primary objective, to protect wolves from "mortality and disturbance at den sites," as well as a Plan provision directing lethal control to be minimized near dens, and its recommendation that livestock owners avoid "grazing livestock near wolf territory core areas, especially dens and rendezvous sites."

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[17] *WSU Issues Statement Clarifying Comments on Wolf Pack*, August 31, 2016, https://news.wsu.edu/2016/08/31/wsu-issues-statement-clarifying-comments-profanity-peak-wolf-pack/.

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M. WDFW Implements 2017 Protocol Designed to Kill Wolves Faster

136. In a February 2017 meeting, WAG members declared that the 2016 Protocol was "terrible," and had resulted in "disaster." These perceived failures led to discussion of creating a new protocol based on lessons learned from Profanity Peak. However, instead of focusing on how to avoid the proximity of the cattle to the wolf den—the factor that created the Profanity Peak problem—the WAG focused on an option WDFW put forward, to start killing wolves earlier.

137. The WAG was not given a chance to learn the real lessons of Profanity Peak, because WDFW has failed to ever come clean about the events that transpired—or to acknowledge to the WAG that it made a grievous error by failing to demand that the salt block and cattle be moved as soon as the proximity was discovered. There is also no sign that the WAG saw two studies completed by WSU and WDFW in 2016 and 2017, which pointed to the conclusion that Profanity Peak was an anomaly that could have been prevented. In the 2016 study, WGU student Jeffrey Brown collared 588 calves in 10 herds to track mortalities over two grazing seasons in wolf-occupied territory. Brown detected no wolf-caused mortalities in any of the collared animals, and found that losses due to wolves were *at most* 0.81%. Brown concluded that "The low mortality estimates suggest that wolves have little widespread impact on livestock mortality in Washington and that livestock producers in this system are effectively managing for all causes of livestock loss."

138. Neither does the record reflect that the WAG ever learned the results of the 2017 study by WGU student Gabriel Spence, which had been under way during the Profanity Peak incident. Spence used GPS to monitor 10 different wolf packs over three grazing seasons. He found that most wolf packs killed no livestock, such that 94% of wolf prey in Washington consists of wild ungulates. On average, wolves killed only 3 of 1,000 cattle in wolf pack territory. While *all* of the packs that killed cattle had a den in an active grazing allotment, Profanity Peak in 2016 was the only pack that had cattle "at the den site while it was being used for wolves," and the pack only started killing cattle after the cattle arrived at the den. Notably,

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Spence also found the predation rate on cattle belonging to Producer X was 3 wolf-killed cows per 100 cows on the range, *roughly 14 times higher* than the average for other Washington livestock owners in wolf territory.

139. On March 14 2017, WDFW sent the WAG its "Draft Concepts and Framework" for a new Protocol ("2017 Framework"). The 2017 Framework signaled a significant shift in the goals of WDFW's lethal control protocols, with the purpose of lethal control now becoming to "influence pack behavior to reduce the potential for recurrent depredations while continuing to promote wolf recovery." In making this change, WDFW explicitly broke from the Plan's "social tolerance" goals of lethal removal, citing to the Chapron/Treves Study in noting that the "reason for using lethal removal as a tool is *not* to increase social tolerance, as the use of lethal removal may or may not have ancillary desired outcomes to social tolerance." The 2017 Framework thus no longer attempted to draw any purported connection between state-sponsored killing of endangered wolves and wolf recovery. Rather, it proclaimed that instead of focusing on wolf recovery, it is now using a "livestock producer-centered and community driven model," through which one of WDFW's roles is to "[r]ecognize and support livestock producers' culture of independence." The 2017 Framework also reiterated language from the 2016 Protocol disclaiming the Plan's focus on "problem wolves," indicating that it is difficult to identify the "offending pack members," and "given this complexity," WDFW gave itself complete discretion on how many wolves to kill.

140. Finally, the 2017 Framework indicated in a "Note for WAG" that identifying a specific number of predations as a threshold for when WDFW will consider lethal removal "may be an over simplification given the complexities in real world situations, has some inherit [sic] challenges, and is not generated by science." However, WDFW acknowledged that "stakeholders" want "certainty and a means to hold government accountable," and offered to accept "a number" for that reason. But WDFW punted to the WAG the decision of whether to use "a number" and what that "number" would be: "Therefore, WDFW prefers to leave the

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number discussion – whether or not to have a number and what number to use if so—to WAG/WDFW process."

141. In its March 23, 2017, comments to this document, Plaintiff Cascadia Wildlands observed that WDFW was using a "quasi-scientific, experimental approach to lethal control" as means of avoiding livestock conflict. Cascadia Wildlands urged WDFW to provide specific guidance on "meaningful, long and short term monitoring efforts" to determine whether the approach was effective, and to test the "equally viable approach" of "not killing wolves in a depredation situation and measuring response."

142. In separate comments dated March 28, 2017, Petitioners and five other conservation organizations told WDFW that "existing science does not support moving quickly to kill wolves in response to depredations as suggested by the draft protocol." The comments challenged WDFW's apparent reliance on the Bradley Study to support this concept, pointing out that the study found that partial pack removal "was only slightly more effective in reducing depredation recurrence than no removal," and that recurrence rates between partial removal and no removal were virtually the same after seven days.

143. Wielgus asked to speak to the WAG during its next meeting on March 29-30, at which it was scheduled to discuss the new protocol. Wielgus was hoping to discuss the results of the research that Spence, his student, had completed for WDFW the previous summer. Wielgus also sought to explain to the WAG that the Profanity Peak conflict could have been avoided if the salt blocks had been moved in June after its proximity to the den was discovered, and if people had been deployed at that time to keep cattle away from the den site and to move them to another pasture.

144. Martorello told Wielgus that he could have only five minutes to address the WAG during the public comment period. WAG member Tom Davis, of the Washington Farm Bureau, said he would not attend the meeting if Wielgus was allowed to speak. Instead, Wielgus sent written comments, conveying the results of the completed WSU field study and his thoughts on Profanity Peak. Wielgus also urged the WDFW to add a requirement to the new

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protocol, specifying that it would only kill wolves on public lands on behalf of livestock owners who had signed and agreed to abide by WDFW's Cooperative Agreement, which sets forth requirements for the use of deterrence measures.

145. None of the considerations raised by Petitioners or Wielgus were discussed during the March 29-30 WAG meeting to finalize the new protocol. Rather, much of the discussion centered on WDFW's unsupported hypothesis that if it killed wolves more quickly, it might result in fewer predations and necessitate the killing of fewer wolves. Records do not indicate that WDFW and the WAG discussed any of the science demonstrating that lethal control is at best ineffective at stopping livestock predations, or the science indicating that when the state kills wolves, it causes the rest of society to value them less as a species.

146. After more than a day of scattered discussions with no general agreement, someone proposed before lunch on March 30 that WDFW "look at all the options" that had been thrown out and "put together a draft statement over lunch." Following lunch, WDFW proposed new "numbers," which would allow lethal removal after either 3 predations within a 30-day rolling window or 4 predations in a 10-month rolling window, if livestock producers "meet[] expectations" for two appropriate deterrence measures and responsive deterrent measures. After more discussion, the WAG's third-party mediator "gauge[d] the temperature" of the group, concluding that there was a "general positive vibe." Following public comment, there was more discussion, during which one WAG member said he was not "feeling great about this" and had not "given approval to anything." In response, a WDFW representative sympathized that "we are all in a really hard spot," but pushed for a decision on whether or not the WAG can "support the policy stuff." Time was up, so soon afterward, the third-party neutral declared a "sufficient consensus." Although nothing was in written form, the WAG had thus decided upon the new thresholds for lethal removal.

147. These new thresholds were the centerpiece of the protocol WDFW issued on June 1, 2017 ("2017 Protocol"). The 2017 Protocol includes WDFW's new goal, that it "may consider lethal removal of wolves to attempt to change pack behavior to reduce the potential

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for recurrent depredations while continuing to promote wolf recovery." Although many of the overt references about being "livestock-producer centered" were removed from the final 2017 Protocol, it espouses two new values, "supporting rural ways of life, and maintaining livestock production as part of the state's cultural and economic heritage." The 2017 Protocol obediently follows the "decision" made by the WAG and charts a quicker path to kill wolves. In contrast to the 2016 Protocol, which required four *confirmed* predations in a *calendar year*, the 2017 Protocol allows WDFW to kill wolves if there are (1) four predations within a 10-month *rolling window*, or (2) three predations within a 30-day rolling window. In both cases, one predation may be a "probable" rather than a "confirmed" wolf predation.

148. The 2017 Protocol describes a "variety of proactive measures livestock producers can take to reduce the probability of wolf-livestock conflicts." These example deterrence measures include "human presence" around livestock, monitoring livestock, protecting calving/lambing areas, avoiding den and rendezvous sites, using scare devices, using guardian or herding dogs, strategic carcass sanitation, using permanent and portable fencing, delaying turnout of calves under 200 pounds, and coordination between the livestock producer and the landowners. None of these proactive measures is required, but the 2017 Protocol provides that WDFW may consider lethal removal only if at least two proactive or responsive deterrence measures had been implemented, and had failed to meet the goal of changing pack behavior. In addition, the 2017 Protocol provides that if proactive deterrence measures were not in place "a sufficient amount of time prior to the wolf depredations," WDFW would consider lethal removal only at a higher number of predation events and after such measures had been tried and failed to resolve the conflict.

149. Before killing wolves, 2017 Protocol also requires WDFW to conclude that it expects predations to continue and that killing wolves is not expected to harm wolf recovery. However, the 2017 Protocol provides no criteria for WDFW to use to determine whether it "expects depredations to continue," deterrence measures were "appropriate," or killing wolves will harm wolf recovery. The 2017 Protocol provides that WDFW will use an "incremental

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removal approach," during which it will have periods of active attempts to kill wolves, followed by periods of evaluation, to see if the predations continue and to give the wolves a chance to regroup so that they can be killed more easily. The 2017 Protocol also provides that WDFW will no longer inform the public when it is going to remove an entire pack of wolves, although "the removal of the entire pack may occur as a result of repeated incremental removals."

150. WDFW did not perform any analysis of the 2017 Protocol's likely effects versus the likely effects of a different approach, such as insisting that livestock owners use more effective non-lethal deterrents before lethal control is considered (including requiring livestock owners to sign WDFW's Cooperative Agreement); requiring that cattle be moved away from known den or rendezvous sites on public lands; or utilizing only non-lethal methods to prevent wolf predations on public lands. Despite WDFW's earlier promises to "incorporate science into the protocol," the 2017 Protocol did not undergo any outside scientific review, and there is no evidence that WDFW conducted any assessment of whether or not lethal control would be effective at reducing livestock predations; weighed the effectiveness of lethal versus non-lethal control after predations occurred; looked at the effects of lethal control on wolf ecology, reproduction and pack dynamics; examined whether killing wolves decreased social tolerance for them; analyzed the importance of keeping livestock away from core wolf areas such as den or rendezvous sites; or considered whether there should be different thresholds for killings wolves on public versus private lands.

151. To the contrary, the 2017 Protocol provides no support at all for its "experimental quasi-scientific" theory that using an "incremental removal approach" and killing wolves after fewer predations would be effective in stopping predations and preventing more wolves from being killed, especially in light of the fact that the weight of the science indicates the opposite is true. Nor does WDFW provide any rationale for using a 10-month rolling window to measure predations, despite the fact that conditions for both the pack and the herd can change drastically during that time. Indeed, WDFW has since admitted that there is no scientific basis for the 10-month rolling predation window.

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152. Unlike previous protocols, the 2017 Protocol includes a bibliography, which cites to a couple of social science studies about human motivations, the population model used to support the plan (developed jointly by Wielgus and WDFW), the materials developed by Western Wildlife Outreach in 2014 on non-lethal deterrence measures, and the Harper Study, which noted that the act of attempting to kill wolves may change behavior of the pack even if unsuccessful. Notably, the 2017 Protocol did not cite to any scientific support for its hypothesis that using incremental measures to kill wolves faster would decrease either livestock predations or wolf deaths. Nor did it show any consideration of the mounting science showing that lethal control is, at best, ineffective.

N. WDFW Issues Order to Kill Members of the Smackout Pack

153. The Smackout wolf pack was confirmed as a pack in 2011, in a forested, mountainous range in Stevens County and Pend Oreille County, including a portion of the Colville National Forest. Following the death of the pack's breeding adult male, other wolves dispersed from the pack and formed the Dirty Shirt, Carpenter Ridge, and Ruby Creek packs. According to the WDFW survey conducted at the end of 2015, the pack had a minimum of eight wolves, including a successful breeding pair.

154. If the 2017 Protocol had been in place, it is likely that the Smackout Pack would not have survived the 2016 grazing season. WDFW reported a confirmed wolf predation resulting in a dead calf on national forest land on September 21, 2016, a probable wolf predation resulting in a dead cow on national forest land on September 28, 2016, and a confirmed wolf predation resulting in an injured calf on private property on September 29, 2016. No further predations were reported in 2016, so the requirements to kill wolves under the 2016 Protocol were not met.

155. There were also no predations reported in spring 2017. However, WDFW reported that wolves started harassing cattle in late June, and on June 30, a ranch employee killed one wolf that the employee said was in the act of attacking livestock.

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156. On July 20, 2017, WDFW reported that there had been an additional confirmed predation attributed to the Smackout Pack on July 18, 2017, resulting in an injured calf. It was only the first confirmed predation of the 2017 grazing season, but under the 2017 Protocol, it counted as the pack's last strike. By a margin of just a few days, the predations from the previous year counted within the 2017 Protocol's rolling 10-month window, bringing the total confirmed and probable predations attributed to the pack to four.

157. On July 20, 2017, WDFW announced that it had authorized the killing of wolves from the Smackout Pack. WDFW later reported that it killed a female pup on July 21, 2017, and a female adult on July 30, 2017. WDFW also reported one additional predation on July 22, 2017, of a calf that was believed to have been killed before July 20, 2017. On July 31, 2017, WDFW reported that was entering an "evaluation period" to determine if it would kill additional wolves.

158. In its July 20, 2017, announcement that it had begun operations to kill members of the Smackout Pack, WDFW noted that over the previous two months, radio signals from GPS collars attached to two of the pack's members indicated that those wolves were frequently within a mile of livestock. This prolonged and frequent proximity, at this time of year, suggests the livestock may have been pastured very close to the pack's den or rendezvous site, or both. However, to date, WDFW has not released information on either the location of all the predations[18] or the locations of the pack's known den or rendezvous sites.

159. On September 21, 2017, WDFW issued a report on the Smackout Pack operation, which claims that the "approach highlighted in the protocol of both proactive and responsive nonlethal deterrents, and the incremental removal, appeared to have the intended effect of changing the Smackout pack behavior." WDFW claimed that the three livestock owners involved in the Smackout Pack conflict had implemented a number of non-lethal

[18] In its final report on the Smackout Pack action, issued on September 21, 2017, WDFW provided a map that shows the location of 3 of the 5 Smackout Pack predations, but did not provide the location of the remaining two because they took place on private land.

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deterrents during the conflict, including using range riders under contract with WDFW, maintaining sanitation by removing sick or injured cattle, and using "fox lights." By WDFW's own account of the facts, there is no way to determine whether these deterrents were responsible for stopping predations this year, leaving WDFW's decision to kill two Smackout Pack wolves after only one predation this grazing season both premature and unnecessary.

160. As of September 25, 2017, WDFW had attributed two predations to the Smackout Pack this year. In return, WDFW had killed two wolves, including a pup.

O. WDFW Issues Order to Eliminate Sherman Pack

161. The Sherman wolves split from the Profanity Peak Pack in early 2016. The Sherman Pack included about five wolves at the start of 2017, with a range in the forested, rugged terrain of the Colville National Forest.

162. On August 25, 2017, WDFW issued an order to kill members of the Sherman Pack, because there had been four predations in a ten-month period of cattle from the Diamond M Ranch. WDFW reported that the livestock owner had satisfied the 2017 Protocol by using range riders and calving outside the grazing area, and summarily reported that it expected predations to continue and that the lethal removal was not expected to harm the wolf population's ability to reach recovery objectives. WDFW stated it was authorizing "incremental removal," and that the "last estimate of pack size from the 2016 survey was 5 wolves." However, at the time, WDFW knew that only two wolves remained of the Sherman Pack, and that "incremental removal" would result in the destruction of the pack.

163. In issuing the order to destroy the Sherman Pack, WDFW did little more than check the boxes on the 2017 Protocol, ignoring its knowledge that some of those boxes were meaningless. WDFW found that Diamond M had adopted two proactive deterrence measures, as required by the 2017 Protocol, but this finding was based on Diamond M's self-reporting, with no attempt by WDFW to verify the accuracy of the information. As one deterrence measure, WDFW claimed that Diamond M's calves were born "outside of occupied wolf range." But WDFW failed to verify that all of Diamond M's calves were actually born outside

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the wolf range, instead basing this finding on "the producer's business model," which entails its calves generally being born early in another location before trucking them in to the grazing allotments.

164. WDFW also credited Diamond M with a non-lethal deterrent for the five range riders paid by WDFW to rotate through its grazing allotments, even though it knew this "human presence" was not meaningful. The contract range rider hired by WDFW indicated in June 2017 that he and the four range riders he supervised were watching cattle for seven producers over four counties. In their July 2017 report, this range rider group indicates it had covered the territories of the Profanity, Sherman, Wedge, Smackout, and Dirty Shirt packs, which cover roughly 1.2 million acres. Diamond M's grazing allotments alone are 30,000 to 40,000 acres of extremely rough terrain, which is inaccessible, even by horseback, and upon which even Diamond M is unable to find its cattle. Indeed, the logs of the range riders hired by Diamond M indicated on some days that they "saw no cattle," while on others they noted only "cattle seen," with no indication of how many.

165. On September 1, 2017, WDFW reported it had killed one member of the Sherman Pack. Although the pack had thus been destroyed, WDFW nevertheless reported that it had begun an "evaluation period" to determine if its action "changed the pack's behavior." It did not acknowledge in any of its weekly reports that the pack had been destroyed. Instead, on October 20, 2017, WDFW announced that the "Sherman pack's behavior had responded to the approach highlighted in the protocol of using non-lethal deterrents, and, if necessary, incremental removal."

P. WDFW Issues the Togo Pack Kill Order

166. On October 27, 2017, a livestock producer shot and killed an adult female wolf that he claimed was chasing his livestock in Northern Ferry County. WDFW found that the action was a valid "caught-in-the-act" shooting, which is allowed under WAC 220-440-080. WDFW reported that the "incident occurred outside any known pack territories."

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167. On or about November 2, 2017, WDFW was contacted by a different livestock producer about an injured calf discovered about three miles from where the wolf had been killed. In a November 9, 2017 update on its website, WDFW reported its conclusion that the calf had been injured by a wolf, and indicated that "[i]nformation on the use of deterrence measures will be provided in our next monthly wolf report."

168. In its next monthly wolf report, issued on or about November 14, 2017, WDFW reported that the producer involved in the November 2, 2017 incident "checks on the cattle multiple times every day during feedings," that he has "used range riders periodically this year and last year," that he "removes sick or injured cattle from the area," and that he receives information from WDFW on the location of nearby collared wolves. The report provided no specifics about any proactive wolf deterrence measures that were in place at the time of the predation, or in the location where the predation took place.

169. In the November 2017 monthly report, WDFW also indicated that the same producer had contacted the agency on November 8 after discovery a calf that had been killed. WDFW reported that it had confirmed that this was a wolf predation, which again had occurred less than three miles from the October 27, 2017 wolf shooting. It did not provide any further details about any proactive deterrence measures used by this producer.

170. WDFW reports that it suspected pack activity in this area, which is now considered the Togo Pack territory, back in 2016. However, it could not verify the presence of wolves during the summer or autumn of 2016. WDFW focused on the area when performing its wolf pack count during the winter of 2016-2017, but did not detect any pack activity. During the 2017 grazing season, a WDFW contract range rider worked with a producer in the area to investigate reports of wolves, but was again unable to document any verifiable pack activity.

171. WDFW wolf biologists spent additional time during the winter of 2017-2018 trying to confirm the presence a wolf pack in the area. In February 2018, WDFW was able to confirm through tracks and scat that at least two wolves were traveling together in the area. As

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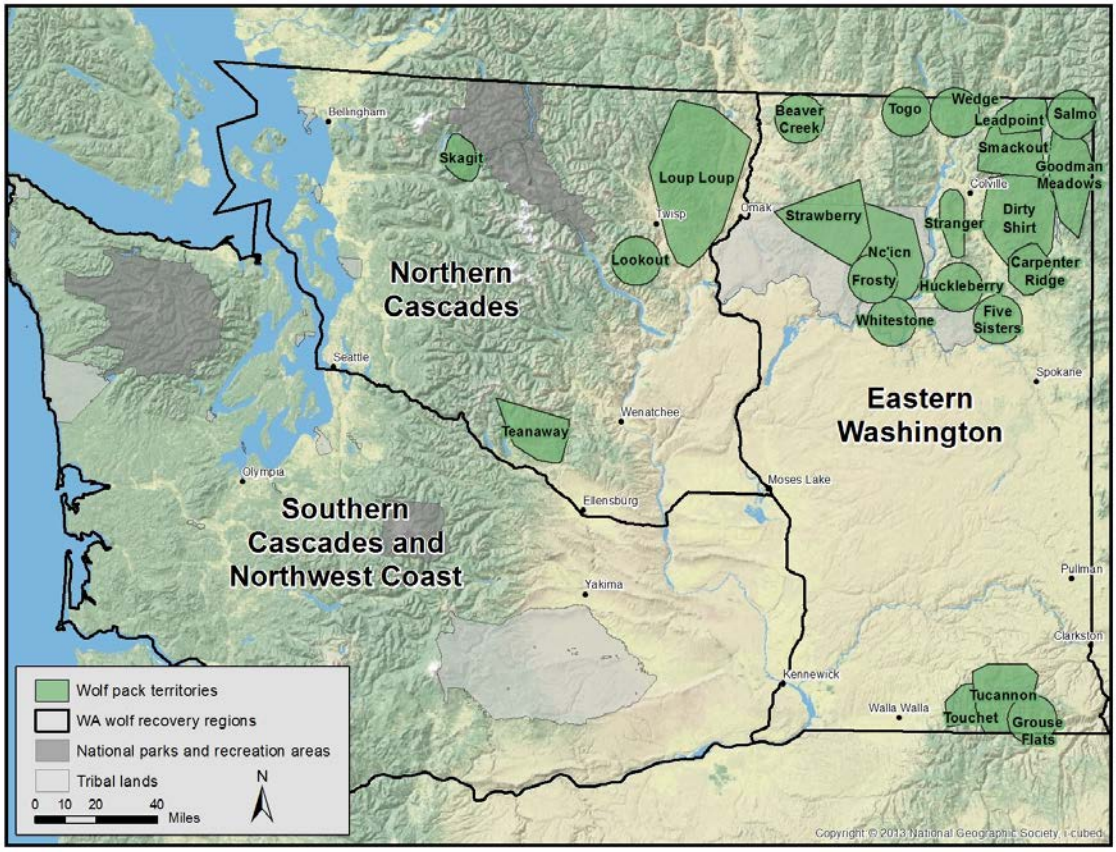
a result, it first recognized the Togo Pack in the 2017 Annual Report, released on March 30, 2018, and listed it as having two members.

172. Although WDFW has not posted specifics about the Togo Pack's range on its website, the map in the 2017 Annual Report indicates that the pack is in North Ferry County, near the Canadian border and next to the territory of the Wedge Pack, and in an area encompassing the rugged terrain of the Colville National Forest. WDFW reports that the Togo Pack spans a wide area stretching across the Kettle Range Mountains.



173. At the time that it identified the Togo Pack, WDFW did not indicate that the pack had been responsible for any cattle predations. WDFW has never raised the issue of retroactively attributing predations from a general geographic area to a newly formed pack with the WAG, and the possibility that WDFW might do this was not addressed in the Plan, the EIS, or the protocols released in 2014, 2016, or 2017. To the contrary, WDFW has expressed in prior

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court proceedings that when it does not have a collar on a member of a pack, it is unable to track that pack for the purposes of attributing predations or executing on kill orders.

174. However, in a May 24, 2018 update to its website, WDFW reported that the Togo Pack was responsible for a dead calf that was discovered on May 20 in a federal grazing allotment in northern Ferry County. At the same time, WDFW declared that this was the "third confirmed depredation involving the Togo pack in the past seven months," announcing for the first time that it was counting the November 2 and 8 predations against the Togo Pack. WDFW did not provide any details about how it knew that the November predations were attributable to the Togo wolves.

175. According to a May 23, 2018 article in the Capital Press, the calf killed on May 20 was just one and half weeks old, and was found on a federal grazing allotment within the Colville National Forest. In its May 24, 2018 update, WDFW reported that the producer was not employing any proactive deterrence measures, other than "checking on his cattle daily." WDFW reported that it had recommended to the producer that range riders would be the most effective deterrent, given that the operation is in unfenced rugged terrain, and that the producer thereafter made plans to rotate range riders through his grazing allotment.

176. In an article on May 24, 2018, the Capital Press reported that because the producer had not met the requirement of deploying at least two deterrence measures before the May 20, 2018 predation, WDFW would not count the predation toward the minimum threshold needed before it will kill wolves. The article said that Martorello had indicated that WDFW would review the November predations to see if they met the criteria to count toward the lethal removal threshold.

177. In a telephone discussion with a representative from the Center on May 25, 2018, Martorello confirmed that the May 20 predation would not count against the Togo Pack. He indicated that he did not know what specific nonlethal deterrent measures were in place at the time of the November 2017 predations, but said that one of WDFW's conflict specialists might know, and promised to get back to the Center with that information. After a follow-up email on

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May 25, 2017, Martorello indicated that WDFW was working on getting a written response to the Center, and that he anticipated replying by the following week. However, on June 7, Martorello responded that the Center would need to submit its requests for information through the public disclosure process. The Center submitted a public disclosure request for this information on June 25, 2018.

178. In the same telephone conversation, Martorello indicated that WDFW decided to attribute the November predations to the Togo Pack as a result of proximity and reported sightings of wolves in the area by locals. But he did not disagree that WDFW had failed to collect any scat from the area in 2017 which could have matched the predations to the Togo Pack, or deny that the predations could have been by lone wolves coming over from nearby wilderness areas in British Columbia.

179. In its July 2018 monthly wolf report, released on or about August 2, 2018, WDFW reported that one of its wolf biologists was able to locate a significant amount of wolf signs from the area in between the locations of the May 20 predation and the November 2017 predation—which it said was normally associated with wolf denning activity. On June 2, 2018, WDFW caught and collared a black adult male wolf in the area of the May 20 predation—marking the first time that it has had a tracking collar on one of the Togo Pack wolves.

180. In an August 11, 2018 website update, WDFW reported that the local sheriff's office had reported a dead cow on a federal grazing allotment in the Togo Pack territory on August 8, 2018. WDFW reported that it had confirmed that the death was a result of wolf predation, and that the producer had left the cow on the allotment, "[d]ue to the remote location and rugged terrain." WDFW reported that the producer had delayed turnout until June, used Fox lights on his private pasture, removed sick or injured cattle from his allotment, and used one or more range riders each day. However, WDFW did not explain how the use of Fox lights in a private pasture were relevant to the August 8 predation, which occurred on federal grazing lands. Nor did WDFW explain how many range riders were being used, over what territory, and whether they were able to monitor all of the cattle each day—or, how the producer could

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claim to be removing "sick or injured cattle" from his allotment at the same time that it reported that the dead cow had been left out in the allotment because the territory was too remote and rugged.

181. In the same update, WDFW also reported that it had received notification August 9 from the same producer about another calf that was injured on the federal grazing allotment, and that it had confirmed that these injuries were also the result of wolf predation.

182. WDFW's update reported that the pack consisted of at least two adult wolves, and possibly a third, and that it had produced an unknown number of pups this spring. Although WDFW claimed that the Togo Pack had thus been responsible for five predations in less than 10 months, it did not indicate that it was issuing a kill order, but that Director Susewind had directed the staff to confirm the number of adults in the pack and learn more about its activities before considering further action.

183. On August 13, 2018, WDFW issued another website update, indicating that it was continuing to gather information on the Togo Pack before making a decision on further action. In particular, WDFW indicated that it had deployed remote cameras to try to determine the number of wolves in the pack, and set traps to try to radio collar additional wolves. WDFW reiterated that the Togo Pack consisted of at least two adult wolves, who had produced an unknown number of pups, and that it had received unconfirmed reports of a potential third wolf.

184. On August 20, 2018, WDFW issued the Togo Pack Kill Order. The Togo Pack Kill Order authorized incremental removal of the wolves from the Togo Pack. It provides that the last estimate of pack size was two adult wolves and an unknown number of pups.

185. In the Togo Pack Kill Order, WDFW reported that there had been another predation reported on August 18, 2018, and that WDFW had confirmed a wolf depredation to a calf belonging to the same livestock producer involved in the August 8 and August 9 predations. Based on this predation, WDFW alleges that the Togo Pack had been responsible for three predations within 30 days, and six predations within the past 10 months. WDFW indicated that the livestock producer had used Fox lights on his private pasture to deter wolves,

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although once again, the predation had occurred off private pasture lands on a federal grazing allotment. WDFW also indicated the producer had removed sick or injured cattle from the allotment, deployed one or more range riders to help check the cattle, and moved the cattle out of areas with higher wolf activity.

FIRST CLAIM FOR RELIEF

Against All Respondents

SEPA Violation: Failure to Perform a Threshold Determination

186. Petitioners incorporate by reference all preceding paragraphs.

187. Under SEPA, a threshold environmental determination is required before any action is taken by a state agency. WAC 197-11-310; *see* WAC 197-11-704 (definition of "action" includes, *inter alia*, agency decisions on management activities that directly modify the environment and agency adoption of any plan or policy governing the development of a series of actions).

188. A threshold environmental determination requires an agency to determine whether a proposed action is likely to have a probable significant adverse environmental impact and to consider mitigation measures. The threshold determination is "critical for full implementation of SEPA's mandate." *Lassila v. Wenatchee*, 89 Wn.2d 804, 813, 576 P.2d 54 (1978). The SEPA responsible official is required to determine whether all or part of the action, as well as alternatives or impacts, have been analyzed in a previously prepared environmental assessment document. The responsible official is also required to take into account the absolute quantitative effects of a proposal, whether several marginal impacts when considered together may result in a significant adverse impact, whether the proposal affects an endangered species, and whether the proposal establishes a precedent for future actions with significant effects. An SEIS is required if the lead agency reasonably believes that a proposal may have a significant adverse impact. WAC 197-11-330.

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189. Despite a request from Petitioners in March 2017, Respondents refused to initiate SEPA review on the 2017 Protocol. Respondents have refused to conduct a threshold determination before issuing the Togo Pack Kill Order, or the 2017 Protocol on which it relies for guidance. Respondents thus failed to determine whether the Togo Pack Kill Order, and other orders based on the 2017 Protocol, would have a significant environmental impact or to consider alternatives such as an exclusive focus on non-lethal control. As the SEPA responsible official, Wood failed to take into account relevant factors, including the absolute quantitative effects of the Togo Pack Kill Order, the quantitative effects of the 2017 Protocol on which it relied for guidance, and whether the Togo Pack Kill Order and the 2017 Protocol establish a precedent for future actions with regard to an endangered species.

190. Respondents' failure to conduct a threshold environmental determination is a violation of SEPA.

191. WDFW should be enjoined from enforcing the Togo Pack Kill Order, or issuing any further kill orders, until it has conducted the required threshold determination for a protocol to guide any such future orders.

192. Petitioners are entitled to an award of costs, attorneys' fees, and other expenses associated with this litigation pursuant to the Equal Access to Justice Act, RCW 4.84.350.

SECOND CLAIM FOR RELIEF

Against All Respondents

SEPA Violation: Failure to Produce a Supplemental Environmental Impact Statement

193. Petitioners incorporate by reference all preceding paragraphs.

194. The purpose of SEPA is to provide decision makers and the public information about potential adverse impacts of a proposed action, and ensure decisions are made after thorough scientific analysis, consideration of expert comments, and public scrutiny.

195. Under SEPA, an agency must consider environmental information—impacts, alternatives, and mitigation—before committing to a particular course of action. WAC 197-11-055(2)(c). SEPA requires an agency to consider total environmental and ecological factors to

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the fullest extent when taking major actions significantly affecting the environment. The procedural requirements of SEPA are designed to provide full environmental information and are to be invoked whenever more than a moderate effect on the quality of the environment is a reasonable probability. *Moss v. City of Bellingham*, 109 Wn. App. 6, 19, 31 P.3d 703 (2001). When describing the environmental impacts of a proposal, the agency should consider direct, indirect, and cumulative impacts.

196. Environmental review may occur in phases. WAC 197-11-060. Phased review assists agencies and the public to focus on issues that are ready for decision and exclude from consideration issues not yet ready for decision The Plan and the EIS were part of a phased environmental review.

197. SEPA requires an SEIS if there are substantial changes to a proposal which are likely to have significant adverse environmental impacts or when new information indicates a proposal's probable significant adverse environmental impacts were not previously covered by the range of alternatives in existing environmental documents. WAC 197-11-600.

198. The EIS for the Plan provides, "Specific actions that may be proposed in the future relating to gray wolf management in Washington would be evaluated under a supplemental environmental impact statement process." The EIS for the Plan does not weigh the individual or cumulative environmental impact of any specific criteria for the lethal removal of wolves while they are a state endangered species; the impact of the standards used by WDFW under the 2017 Protocol to execute the Togo Pack Kill Order; or the impact of WDFW's wolf killing program as outlined by the 2017 Protocol. The EIS did not evaluate any wolf killing program, or weigh the impacts of alternatives to any such program.

199. The Togo Pack Kill Order is a specific action related to gray wolf management that was not considered by the EIS. The 2017 Protocol, on which the Togo Pack Kill Order relies, outlines a wolf killing program that was not considered by the EIS. The Togo Pack Kill Order and the 2017 Protocol represent a substantial change to the EIS likely to have significant adverse direct and cumulative environmental impacts.

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200. New information since the development of the EIS also indicates that significant adverse environmental impacts of such lethal control actions were not previously covered by the EIS. Scientific research since the EIS demonstrates that non-lethal control measures are the most effective means of reducing predations; that the single most important factor in predicting wolf predations is distance between livestock and wolf den sites and rendezvous points; that lethal control measures are not effective at reducing wolf predations, but may actually increase them; and that lethal control measures by the state may have a negative impact on public perception of wolves, and may actually increase illegal poaching of wolves by the public. This research indicates that the likely significant adverse environmental impacts of the Togo Pack Kill Order, and the 2017 Protocol on which it relies, were not previously considered by the alternatives and impacts covered in the EIS.

201. The Togo Pack Kill Order, and the 2017 Protocol on which it relies, constitute substantial changes to the EIS which are likely to have significant adverse environmental impacts. Additionally, new scientific information indicates that the probable significant adverse environmental impacts of WDFW's wolf killing program were not previously covered by the range of alternatives and impacts in the EIS.

202. Respondents violated SEPA by issuing the Togo Pack Kill Order without first preparing an SEIS that considered the likely adverse environmental impacts of the wolf killing program outlined by the 2017 Protocol.

203. Respondents should be enjoined from enforcing the Togo Pack Kill Order, or issuing any further kill orders, until it has conducted the required SEIS on the criteria that it uses to authorize and implement such orders.

204. Petitioners are entitled to an award of costs, attorneys' fees, and other expenses associated with this litigation pursuant to the Equal Access to Justice Act, RCW 4.84.350.

THIRD CLAIM FOR RELIEF

Against Respondents WDFW and Susewind

APA Violation: The Togo Pack Kill Order is Arbitrary and Capricious

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205. Petitioners incorporate by reference all preceding paragraphs.

206. Action by an agency that is arbitrary and capricious is void under the APA. RCW 34.05.570. Agency action is arbitrary and capricious if it is "willful and unreasoning and taken without regard to the attending facts or circumstances." *Washington Indep. Tel. Ass'n v. Washington Utils. and Transp. Com'n*, 148 Wn.2d 887, 905, 64 P.3d 606 (2003).

207. Through the Togo Pack Kill Order, WDFW has violated the requirements of its 2017 Protocol, by failing to ensure that meaningful non-lethal deterrent measures were in place at the time of the alleged wolf predations, and by retroactively attributing predations to a pack that occurred before it was recognized by WDFW, and before any of its members could be tracked.

208. In addition, the Togo Pack Kill Order, and the 2017 Protocol on which it relies, is arbitrary and capricious because it is inconsistent with the limitations of the Wolf Conservation and Management Plan formally adopted by the Commission, which, among other relevant provisions, requires the agency to minimize wolf mortality as a result of lethal control; requires an emphasis on non-lethal management techniques; provides that lethal control may only be used when non-lethal deterrence measures have been tried but failed to resolve the conflict; provides that lethal control may only be used on a case-by-case basis after full evaluation of all the relevant circumstances; and allows for the use of lethal control only insomuch as it serves the greater purpose of wolf recovery by reducing the illegal poaching of wolves.

209. The Togo Pack Kill Order is arbitrary and capricious because it purports to rely upon, but takes action that is inconsistent with, the guidance of the 2017 Protocol. The Togo Pack Kill Order does not meet the criteria established by the 2017 Protocol, and the criteria in the 2017 Protocol are themselves arbitrary and capricious and in contravention of the Plan. The 2017 Protocol was developed through a flawed advisory group process, in which WDFW impeded the flow of accurate information and suppressed science that contradicted its assumptions.

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210. The Togo Pack Kill Order is arbitrary and capricious and in contravention of the Plan, because it would authorize the killing of one or more wolves in a reproductive pack, even though the pack has only two confirmed adults and pups who are less than six months old and unable to survive on their own. Killing one or more wolves from the Togo Pack would likely have the effect of causing the pups from the pack to starve.

211. WDFW took action through the Togo Pack Kill Order without adequate and reasonable independent investigation, based on flawed and incomplete information. The Togo Pack Kill Order was issued in contravention to the provisions of the Plan, because it authorizes the killing of one or more adult wolves when there are perhaps only two wolves in the pack, and WDFW failed to emphasize non-lethal deterrents,

212. Both the Togo Pack Kill Order and the 2017 Protocol on which it relies for guidance fail to consider the attending facts and circumstances, including the scientific evidence that state-sponsored lethal control not only fails to reduce wolf-livestock conflicts and the illegal poaching of wolves—but that, to the contrary, it might actually increase livestock predation and wolf poaching. In particular, WDFW ignored and/or actively suppressed prevailing scientific research indicating that non-lethal control measures are the most effective means of reducing predations; that the single most important factor in predicting wolf predations is distance between livestock and wolf den sites and rendezvous points; that lethal control measures are not effective at reducing wolf predations, but may actually increase them; and that lethal control measures by the state have a negative impact on public perception of wolves, and actually increase illegal poaching of wolves by the public.

213. The Togo Pack Kill Order should be declared invalid and its implementation enjoined as arbitrary and capricious agency action under RCW 34.05.570(4).

214. WDFW should be enjoined from issuing further orders that, like the Togo Pack Kill Order, are based on the guidance of the 2017 Protocol.

215. Petitioners are entitled to an award of costs, attorneys' fees, and other expenses associated with this litigation pursuant to the Equal Access to Justice Act, RCW 4.84.350.

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PETITIONERS' PRAYER FOR RELIEF

Petitioners respectfully request that this Court:

1. Declare that WDFW violated SEPA and the APA in purporting to authorize the lethal removal of one or more members of the Togo Pack;

2. Declare that any future kill orders are invalid until WDFW has completed a threshold SEPA determination of significance regarding agency lethal wolf removal actions;

3. Declare that any future kill orders are invalid until WDFW has completed an SEIS on a protocol that sets forth the criteria for such orders;

4. Order WDFW to withdraw the Togo Pack Kill Order;

5. Enjoin WDFW and its agents from killing the remaining members of the Togo Pack;

6. Enjoin WDFW and its agents from issuing any further kill orders, or taking actions to kill any additional wolves, until such time as WDFW demonstrates to this Court that it has adequately complied with the law;

7. Award Petitioners their costs of suit and attorneys' fees; and

8. Grant Petitioners such other relief as the Court deems just and equitable.

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DATED: August 20, 2018

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CERTIFICATE OF SERVICE

Pursuant to RCW 9A.72.085, the undersigned certifies under penalty of perjury under the laws of the State of Washington, that on the 13th day of August 2018, the document attached hereto was presented to the Clerk of the Court for filing and uploading to the CM/ECF system and served upon the attorney and parties listed below in the following manner:

Bob Ferguson, Attorney General Attn: Division of Fish, Wildlife and Parks 1125 Washington Street SE Olympia, WA 98501	☐ by **Thurston County ECF** ☐ by **Electronic Mail** ☐ by **Facsimile Transmission** ☐ by **First Class Mail** ☑ by **Hand Delivery** ☐ by **Overnight Delivery**
Kelly Susewind, Department of Fish and Wildlife Natural Resources Building 1111 Washington St. SE Olympia, WA 98501	☐ by **Thurston County ECF** ☐ by **Electronic Mail** ☐ by **Facsimile Transmission** ☑ by **First Class Mail** ☐ by **Hand Delivery** ☐ by **Overnight Delivery**
Lisa Wood, SEPA Coordinator Dept. of Fish and Wildlife Natural Resources Building 1111 Washington St. SE Olympia, WA 98501	☐ by **Thurston County ECF** ☐ by **Electronic Mail** ☐ by **Facsimile Transmission** ☑ by **First Class Mail** ☐ by **Hand Delivery** ☐ by **Overnight Delivery**
Department of Fish and Wildlife Natural Resources Building 1111 Washington St. SE Olympia, WA 98501	☐ by **Thurston County ECF** ☐ by **Electronic Mail** ☐ by **Facsimile Transmission** ☐ by **First Class Mail** ☑ by **Hand Delivery** ☐ by **Overnight Delivery**

Executed on the 20th day of August 2018, at Seattle, Washington.

s/ Patti Lane
Patti Lane, Legal Assistant

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EXHIBIT A

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Kelly Susewind
Director

Gray Wolf Conservation and Management

The Washington Department of Fish and Wildlife publishes reports detailing the wolf conservation and management activities undertaken by the department. Click on the title of an update below to see the complete article.

Available updates: 2018 | 2017 | 2016

2018 Updates

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WDFW plans to take lethal action in response to depredation on cattle by Togo wolf pack

August 20, 2018
On August 18, 2018, the Washington Department of Fish and Wildlife (WDFW) documented the third wolf depredation by the Togo pack within the last 30 days, which is also the sixth wolf depredation by the pack within the last 10 months. For the most recent depredation, WDFW officials confirmed that one or more wolves were responsible for injuring a calf on a U.S. Forest Service grazing allotment in Ferry County. The recent depredation has prompted Director Kelly Susewind to initiate the lethal removal provisions of the Wolf Conservation and Management plan (Wolf Plan) and wolf-livestock interactions protocol (Protocol).

The six depredations by the Togo pack include:

Depredation #1 - November 2, 2017

On November 2, 2017 WDFW was contacted by a livestock producer (herein Producer 1; note Producer 1 is a family operation with multiple owners) in Ferry County about an injured calf that was discovered less than three miles from where the unmarked female wolf was killed under caught-in-the-act authority on October 27, 2017 (see November 9, 2017 public update at https://wdfw.wa.gov/conservation/gray_wolf/updates.php?year=2017). A WDFW contracted range rider heard that there was a possible injured calf a day prior, but the calf could not be located at that time. Once the calf was found, it was taken to a holding pen for the investigation. The Ferry County Sheriff and WDFW management staff were notified and on November 3, department staff investigated a reported livestock depredation. A Ferry County Officer was also in attendance for the depredation investigation.

The calf had injuries to both rear flanks and on both rear legs between the pin and hocks. Injuries on the rear flanks included bite lacerations and puncture wounds. Hemorrhaging was noted near bite lacerations in all four locations. After the wound was cleaned and dead tissue was removed, significant hemorrhaging was noted inside the wound, specifically around the wound margins. After a field examination of the injuries to the calf, it was determined to be a Confirmed Wolf Depredation. The determination was based on evidence and recent wolf activity in the area. Repeated reports from Producer 1 and WDFW contracted range rider included recent wolf howls, tracks, scat, and cattle grouping behavior in the pasture where the injured calf was located.

Proactive non-lethal deterrence measures - In this incident, Producer 1 met the expectation of deploying at least two proactive deterrence measures suitable for the operation, which were best suited for the operation and for a sufficient amount of time for the measures to be effective. Those included:

- Producer 1's cattle were on private fenced lands,
- Producer 1 checks on the cattle multiple times every day during feedings,
- Producer 1 removes sick or injured cattle from the area,
- Producer 1 also used range riders periodically in 2017 (as well as 2016), and
- Producer 1 also received locations of nearby collared wolves via WDFW's Sensitive Wildlife Data Sharing Agreement.

Responsive non-lethal deterrence measures - After the investigation on November 3, WDFW staff and Producer 1 considered potential responsive deterrent measures consisting of fladry, fox lights and increased range riding activity. The producer decided to move cattle to a different private large fenced grazing pasture, utilize fox lights and agreed to increase range rider activity.

Depredation #2 - November 8, 2017

On November 8, WDFW was contacted by Producer 1 and he reported a calf carcass that was discovered while moving cattle in a different private large fenced grazing pasture. The calf was tarped by Producer 1, a hired hand, and range rider for the pending investigation. Wolf tracks were reported at the scene. The Ferry County Sherrif and WDFW management staff were notified that field staff were responding to conduct a depredation investigation per the 2017 Wolf-Livestock Interaction Protocol On November 9, WDFW conducted an investigation, accompanied by a Ferry County Deputy and WDFW Contracted Range Rider. After a field investigation and necropsy of the calf carcass, it was determined to be a Confirmed Wolf Depredation. The determination was based on bite lacerations with associated hemorrhaging, signs of a struggle near the calf carcass, large canid tracks near the calf carcass, recent wolf activity in the area, and the confirmed wolf depredation on November 2 in the area.

Proactive non-lethal deterrence measures - In this incident, Producer 1 met the expectation of deploying at least two proactive deterrence measures suitable for the operation, that were best suited for the operation and for a sufficient amount of time for the measures to be effective. Producer 1 continued using the following non-lethal deterrence measures:

- Cattle on private fenced lands,
- Checked on the cattle multiple times every day during feedings,
- Removed sick or injured cattle from the area,
- Utilize fox lights ,
- Used range riders periodically in 2018, and

- Receiving locations of nearby collared wolves via WDFW's Sensitive Wildlife Data Sharing Agreement.

Depredation #3 - May 20, 2018

A woodcutter reported the incident to the producer (herein Producer 2), who had seen the calf alive earlier in the day and who then found the carcass and reported the incident to WDFW. The incident was on a federal grazing allotment in northern Ferry County, in the same vicinity as the November 2 and 8, 2017 wolf depredations. A woodcutter working in the area said he approached a gate that separates U.S. Forest Service land from private property, where he heard a cow bawling and saw a black wolf running from the area where the calf was found. A WDFW official arrived later on May 20 and conducted an investigation with help from a wildlife specialist employed by Stevens and Ferry counties.

The investigators found that the calf had bite lacerations and puncture wounds to both rear quarters, upper rear legs, neck and sternum, consistent with predation by a wolf. Hemorrhaging, indicating the calf was initially alive during the encounter, was visible near the bite wounds and was also found in the left front armpit, where no lacerations or punctures were visible. Based on all available evidence, WDFW classified the event as a confirmed wolf depredation by one or more members of the Togo pack (note, the area was confirmed as the Togo wolf pack territory from surveys conducted in February 2018).

Proactive non-lethal deterrence measures - In this incident, Producer 2 did not met the expectation of deploying at least two proactive deterrence measures that were best suited for the operation. Producer 2 deployed one proactive deterrence measure, which was checking on his cattle daily.

Responsive non-lethal deterrence measures - Department staff and Producer 2 discussed additional responsive deterrent strategies (including the use of fladry and Foxlights) but agreed the use of range riders would be the most effective additional deterrent, given that the cow-calf operation takes place in an unfenced allotment in rugged terrain. Later on May 20, Producer 2 deployed a range rider and made plans to rotate several riders from the Northeast Washington Wolf-Cattle Collaborative and WDFW to provide ongoing daily or near-daily coverage.

Depredation #4 - August 8, 2018

On August 8, 2018, WDFW was contacted by a wildlife specialist employed by the Stevens and Ferry County Sheriff's Offices about a potential wolf depredation on a U.S. Forest Service grazing allotment in the Togo pack wolf territory in Northern Ferry County, near Danville. Later that day, WDFW staff documented a deceased adult cow. The owner of the livestock is Producer 1. During the investigation, staff documented bite lacerations with associated hemorrhaging, signs of a struggle down a steep hill and around the cow carcass, and recent wolf activity in the area. Based on that evidence, they confirmed that the death was a depredation by one or more wolves from the Togo pack.

Due to the remote location and rugged terrain, the cow carcass was left on site. However, Producer 1 and his range rider - moved the cattle to a different area of the allotment. The cow was turned out as part of a cow-calf pair, but Producer 1 and range rider were not able to locate her calf.

Proactive non-lethal deterrence measures - In this incident, Producer 1 met the expectation of deploying at least two proactive deterrence measures that were best suited for the operation and for a sufficient amount of time for the measures to be effective. Throughout the 2018 grazing season Producer 1 used a variety of deterrent measures to protect the livestock. Producer 1:

- Delayed turnout until late June so the calves would be larger,
- Used Fox lights on his private pasture to deter wolves,
- Following turnout, he removed sick or injured cattle from the allotment,
- Deployed one or more range riders each day to help the producer check the cattle, and
- Moved the cattle when necessary out of areas with higher wolf activity to minimize interactions between wolves and livestock.

Responsive non-lethal deterrence measures - After the investigation on August 8, WDFW staff and Producer 1 considered potential responsive deterrent measures and decided additional range riders would be the best option for their operation.

Depredation #5 - August 9, 2018

On August 9, at about 9:30 p.m., the department was contacted by a WDFW-contracted range rider about another potential wolf depredation in the Togo pack area that injured a 350-pound calf owned by Producer 1. Producer 1 and range rider moved the injured calf, and the cow that accompanied it, from the allotment to a holding pen at their residence.

On August 10, WDFW staff and the two counties' wildlife specialist examined the cow and calf. The cow did not appear to have any injuries, but they documented bite lacerations to both of the calf's hamstrings and left flank, and puncture wounds and associated hemorrhaging to the left hindquarter and stomach. Based on the evidence and related factors, the investigators confirmed that the calf's injuries were the result of a wolf depredation and classified the event as a confirmed wolf depredation. The cow and injured calf were kept at the holding pen for monitoring.

Proactive non-lethal deterrence measures - In this incident, Producer 1 met the expectation of deploying at least two proactive deterrence measures that were best suited for the operation and for a sufficient amount of time for the measures to be effective. Producer 1 continued using the following non-lethal deterrence measures:

- Used Fox lights on his private pasture to deter wolves,
- Removed sick or injured cattle from the allotment, and
- Deployed one or more range riders each day to help the producer check the cattle, and
- Moved the cattle when necessary out of areas with higher wolf activity to minimize interactions between wolves and livestock.

Depredation #6 - August 18, 2018

On August 18, WDFW staff received a call from a wildlife specialist employed by the Stevens and Ferry County Sheriff's Offices about another potential wolf depredation in the Togo pack area that injured a 450-pound calf owned by Producer 1. Producer 1 and range rider moved the injured calf from the allotment, and the cow that accompanied it, from the allotment to a holding pen at their residence. USFS District Ranger was notified of the depredation event. WDFW staff conducted a field examination of the injured calf with the help of a squeeze chute. Present during the examination were the producers and counties' wildlife specialist.

On August 18, WDFW staff and the two counties' wildlife specialist examined the cow and calf. The injured calf had bite lacerations and bite puncture wounds to the outside lower left hindquarter, the left hamstring, the inside of the left hock and

the groin area. Adjacent to the bite puncture wounds on the hamstring and groin was hemorrhaging to the underlying tissue as indicated by severe swelling. Infection had also set in on two of the bite puncture wounds. The bite lacerations, bite puncture wounds and tissue hemorrhaging adjacent to the puncture wounds are consistent with a signature style wolf attack on cattle. Investigators confirmed that the calf's injuries were the result of a wolf depredation and classified the event as a confirmed wolf depredation.

Proactive non-lethal deterrence measures - In this incident, Producer 1 met the expectation of deploying at least two proactive deterrence measures that were best suited for the operation and for a sufficient amount of time for the measures to be effective. Producer 1 continued using the following non-lethal deterrence measures:

- Used Fox lights on his private pasture to deter wolves,
- Removed sick or injured cattle from the allotment,
- Deployed one or more range riders each day to help the producer check the cattle, and
- Moved the cattle when necessary out of areas with higher wolf activity to minimize interactions between wolves and livestock.

As a result of these events, the guidance provided in the Wolf Plan and Protocol the minimum threshold has been reached for consideration and possible implementation of lethal removal the Togo Pack. WDFW Director Kelly Susewind has authorized lethal removal of wolves from the pack, consistent with the Department's Wolf Plan and Protocol.

The goal of lethal removal from the Wolf Plan is to manage wolf-livestock conflicts in a way that minimizes livestock losses, while at the same time not negatively impacting the recovery or long-term perpetuation of a sustainable wolf population. Building on that, the purpose of lethal removal in the Togo pack is to change wolf pack behavior to reduce the potential for recurrent wolf depredations on livestock while continuing to promote wolf recovery (see Protocol). Consistent with the terms of the Wolf Plan and Protocol, the rationale for lethal removal in this case is as follows:

1. WDFW has documented three wolf depredation by the Togo pack within the last 30 days, which is also the sixth wolf depredation by the pack within the last 10 months. All six of the depredation events were confirmed wolf depredations (resulting in two dead calves, one dead cow, and three injured calves). The three most recent depredations occurred over approximately a 10 day period, AND
2. At least two (2) proactive deterrence measures, and responsive deterrence measures as deemed appropriate, have been implemented and failed to meet the goal of influencing/changing pack behavior to reduce the potential for recurrent wolf depredations on livestock in 5 of the six events, AND
3. WDFW expects depredations to continue based of the history of depredations and the appropriate non-lethal measures having been deployed resulting in no change of wolf behavior , AND
4. The Department has documented the use of appropriate deterrence measures and notified the public of wolf activities in a timely manner as outlined in the Protocol. WDFW provided updates on November 9, November 15, December 6, 2017 and May 24, June 1, 2018, August 11, and August 13, 2018 with information on all wolf depredations on livestock in the area, AND
5. The lethal removal of wolves is not expected to harm the wolf population's ability to reach recovery objectives statewide or within individual wolf recovery regions. Comparing the actual level of wolf mortality to that modeled in the Wolf Conservation and Management Plan (appendix G and H), actual average wolf mortality is about 8.4 animals or 10% of the estimated population. This level is well below the 28% baseline annual mortality assumed in the wolf plan model before any simulated wolf removals, which incorporates a 30% lethal removal mortality in addition to the baseline mortality. The model was conducted assuming the regional wolf population was at the regional recovery objective. The wolf population in the eastern recovery region has more than doubled the regional recovery objective.
6. As mentioned earlier, Director Susewind has authorized an incremental removal of pack members from the Togo Pack. The last estimate of pack size during August was 2 adult wolves and an unknown number of pups. The Department expects to begin the effort after 8 business hours following this public notice. The removal effort will likely continue for a two-week period or less.

The Department will use humane lethal removal methods consistent with state and federal laws. The objective of the methodology is to use the best methods available while considering human safety, humaneness to wolves, swift completion of the removal, weather, efficacy, and cost. Likely options include shooting from a helicopter, trapping, and shooting from the ground.

Per the Wolf plan Protocol, WDFW's approach is incremental removal, which has periods of active removals or attempts to remove wolves, followed by periods of evaluation to see if the goal of changing pack behavior was met. The first incremental removal will follow the provision of the Protocol in section 7.

The Department will keep the public informed about this activity through weekly updates. The Department will provide a final report to the public on any lethal removal action after the operation has concluded.

Packs Referenced: Togo

Togo pack update

August 13, 2018

Additional depredations documented by Togo wolf pack

August 11, 2018

Monthly Wolf Report - July 2018

August 2, 2018

Wolf Advisory Group conference call

July 31, 2018