



**THE HUMANE SOCIETY  
OF THE UNITED STATES**

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*Submitted via e-mail and certified mail*

**Re: Unlawfulness of Early 2021 Wolf Hunt**

Dear Secretary Cole and Dr. Prehn:

On behalf of the Humane Society of the United States, I am writing to urge the Wisconsin Department of Natural Resources (“DNR,” or “Department”) not to hold a wolf hunt in January and February of 2021, as it would be entirely unlawful. The DNR is already in violation of state law due, in part due to its failure to reconcile its wolf hunting regulations with state statute. The DNR must revise its regulations to come into compliance with statute prior to establishing or implementing any wolf hunt, and it may not legally establish a season that begins in January or February.

**I. DNR Regulations Conflict with Statute**

Before implementing any wolf season, the DNR must amend its regulations to comply with the wolf season dates mandated by Wis. Stat. § 29.185(5).

The DNR’s current rule governing its implementation of a wolf hunting season is EmR1210—an emergency rule put in place in 2012 pursuant to the Legislature’s directive in 2011 Wisconsin Act 169.<sup>1</sup> Although the DNR began the process of promulgating a permanent rule to replace EmR1210, as it was legally required to do, the DNR never completed that process, and EmR1210 is still in effect.<sup>2</sup>

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<sup>1</sup> 2011 Wis. Act 169 § 21(1)(b).

<sup>2</sup> *See id.* § 21(1)(a), (b); 779A3 Wis. Admin. Reg., Emergency Rules in Effect (Nov. 16, 2020), [https://docs.legis.wisconsin.gov/code/register/2020/779a3/register#emr\\_effect](https://docs.legis.wisconsin.gov/code/register/2020/779a3/register#emr_effect).

EmR1210, among other things, sets the open season for wolf hunting and trapping as beginning on October 15 of any given year in which a wolf season is legal.<sup>3</sup> This provision complied with law at the time EmR1210 was promulgated, as 2011 Wisconsin Act 169 § 6, creating Wis. Stat. § 29.185, mandated October 15 as the start date for wolf season.<sup>4</sup> However, in 2016, the Legislature amended § 29.185 to replace “October 15th” with “the first Saturday in November.”<sup>5</sup> But the DNR, unlawfully, never amended its regulation to align with the revised statute.<sup>6</sup>

The DNR has maintained this legally-defective emergency regulation for more than four years. The Department has additionally violated the law by failing to reveal this legal conflict to the Joint Committee for Review of Administrative Rules (“JCRAR”). Statute requires that the DNR submit a report to the JCRAR by March 31<sup>st</sup> of every odd year identifying rules that, among other defects, “are duplicative of, superseded by, or in conflict with . . . a state statute.”<sup>7</sup> That report must also include what, if anything, the DNR intends to do to remedy that conflict, or why it intends to take no action.<sup>8</sup> In its first and only such report, filed in 2019, the DNR illegally failed to list either EmR1210 or Wis. Admin. Code NR § 10.01(3)(j), despite the fact that those regulations were superseded by and were in conflict with a state statute, Wis. Stat. § 29.185(5).<sup>9</sup> The legal requirement to identify such unlawful regulations contains no exception for emergency rules, nor does it contain any exception for regulations that were superseded by statute or were otherwise in conflict with statute prior to when this reporting requirement became effective.<sup>10</sup>

The Department is already in violation of the law, and must not double down on that violation. As the DNR’s current regulation governing its wolf hunting season is plainly in conflict with statute, to hold a season pursuant to that regulation without first amending it to come into compliance with the statute would be unlawful.

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<sup>3</sup> EmR1210 § 9 (creating Wis. Admin. Code NR § 10.01(3)(j)).

<sup>4</sup> 2011 Wis. Act 169 § 6; Wis. Stat. § 29.185(5) (Apr. 17, 2012).

<sup>5</sup> 2015 Wis. Act 285 § 1; Wis. Stat. § 29.185(5) (March 31, 2016).

<sup>6</sup> See Wis. Stat. § 227.40(4)(a) (“In any proceeding pursuant to this section for judicial review of a rule or guidance document, the court shall declare the rule or guidance document invalid if it finds that it . . . exceeds the statutory authority of the agency”); see also *Wis. Citizens Concerned for Cranes & Doves v. Wis. Dep’t of Natural Res.*, 2004 WI 40, ¶ 14, 270 Wis.2d 318, 335, 677 N.W.2d 612, 620 (Wis. 2004) (“[I]f an administrative rule conflicts with an unambiguous statute or a clear expression of legislative intent, the rule is invalid.”)

<sup>7</sup> Wis. Stat. § 227.29(1)(d).

<sup>8</sup> *Id.* § 229.29(2)(a).

<sup>9</sup> See Wis. Dep’t of Natural Res., *Wis. Stat. § 229.29 Report on Rules* (2019).

<sup>10</sup> See Wis. Stat. § 227.29(1), (2); see also 2017 Wis. Act. 108 § 8 (noting that § 227.29(4) applies only to conflicts with statutes published after the effective date of 2017 Wisconsin Act 108, but providing no similar exception to the requirements of § 227.29(1) or (2)).

**II. A Wolf Season Beginning in January or February Would Be Unlawful and Undermine the DNR’s Ability to Manage Wolves**

To establish a wolf hunt beginning in January or February would directly conflict with statute, and constitute a second legal violation independent of the regulatory conflict identified in Section I, above.

2011 Wisconsin Act 169, as amended, states in unambiguous terms: “The department *shall establish a single annual open season* for both hunting and trapping wolves that *begins on the first Saturday in November of each year* and ends on the last day of February of the following year.”<sup>11</sup> If The DNR were to put into place an early 2021 wolf hunt, it would effectively be establishing a season, and to establish a season that begins any day other than the first Saturday in November would be beyond the DNR’s authority and directly conflict with this statutory language.<sup>12</sup> To the extent that any uncertainty exists as to whether a hunting season must strictly conform to the season dates set out by statute, it must be resolved in favor of strict adherence to the explicit language of the statute. The Wisconsin Legislature directs courts to “narrowly construe imprecise delegations of power to administrative agencies,” limiting them to only the “explicit authority” granted by statute.<sup>13</sup> Here, the DNR has only been delegated the explicit authority to establish a hunting season beginning in November.

Therefore, if the DNR elects to proceed with a wolf season at the first available opportunity, it has no choice but to wait until the first Saturday in November of 2021. It has no discretion to establish a season beginning any other date, nor does it have any discretion to establish more than one season in a given year.

On October 29, 2020 the Wisconsin Legislative Council issued a memorandum regarding “Steps to Implement a State Wolf Hunt.”<sup>14</sup> The Legislative Council’s analysis does not address, let alone refute, the legal deficiencies identified above. The purpose of this memorandum was to identify what steps the DNR would need to take in order to implement an otherwise lawful wolf hunt—not to assess the legality of opening a wolf hunt in January or February.<sup>15</sup> The memorandum assumed, for the purpose of the question posed, that the statute would be interpreted to require the DNR to hold a wolf hunt upon federal delisting between the first Saturday in November and the last day in February.<sup>16</sup> It is important to note that this memorandum did not decide the question of whether

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<sup>11</sup> Wis. Stat. § 29.185(5) (emphasis added).

<sup>12</sup> See Wis. Stat. § 227.10(2m) (“No agency may implement or enforce any standard, requirement, or threshold . . . unless that standard, requirement, or threshold is explicitly required or explicitly permitted by statute”).

<sup>13</sup> *Wis. Legislature v. Palm*, 2020 WI 42, ¶ 52, 391 Wis.2d 497, 530-31, 942 N.W.2d 900, 916-17 (Wis. 2020) (citing Wis. Stat. §§ 227.10(2m), 227.11(2)(a)(1)-(3)).

<sup>14</sup> Memorandum from Anna Henning, Senior Attorney, Wis. Legislative Council to Rep. Paul Tittl (Oct. 29, 2020).

<sup>15</sup> *Id.* at 1.

<sup>16</sup> *Id.* at 2.



the statute *prohibits* the DNR from establishing such a season. Additionally, while the memorandum noted the amendment of Wis. Stat. § 29.185 in 2016, it did not address the fact that this statutory amendment created a conflict with EmR1210, or the fact that a hunt managed under a superseded and unlawful regulation would be illegal.<sup>17</sup> Similarly, the Legislative Council’s November 2020 Issue Brief on “Wolf Delisting and Harvest Season” did not address these legal pitfalls.<sup>18</sup>

In addition to being a clear violation of statute, a wolf season held in January and February would be unwise and would undermine the DNR’s credibility, as it would undercut the Department’s ability to properly manage and monitor its wolf population. When the Legislature passed 2011 Wisconsin Act 169, there was significant debate over whether to allow *any* hunting of wolves in January and February, due to concerns about wolf breeding season and the DNR’s inability to get an accurate late winter count during a wolf hunt. Ultimately, the law allows (in an otherwise lawful season) for a season to *continue through* those months. However, the Legislature never contemplated that a hunt would be held for *only* those months.

Several individuals, including one of the DNR’s own wolf management experts and a census wolf tracker, opposed allowing any January or February hunt. At the Senate Committee on Natural Resources and the Environment’s public hearing on 2011 SB 411, which would ultimately become 2011 Wisconsin Act 169, former DNR wildlife biologist and wolf management expert Richard Thiel testified.<sup>19</sup> Mr. Thiel also testified at the Assembly Committee on Natural Resources’ public hearing on 2011 AB 502, the Assembly version of the bill that would become 2011 Wisconsin Act 169.<sup>20</sup> According to his testimony, Mr. Thiel is a retired wildlife biologist who worked for DNR for 34 years, created and managed the department’s wolf recovery program, ran that program between 1980 and 1989, managed wolf monitoring activities within the central forest region of the state (Zone 2) from 1995 to 2011, co-drafted the Wisconsin Wolf Management Plan, and authored numerous professional articles and books on Wisconsin’s wolves.<sup>21</sup> Mr. Thiel testified that he supported a responsible public wolf hunt, but identified several “shortcomings” of both bills that would make the DNR vulnerable to legal challenges.<sup>22</sup> The first such shortcoming was “the timing of a harvest for wolves that includes all of the breeding season, January and February,” and the first

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<sup>17</sup> *Id.* at 2, n. 3.

<sup>18</sup> See Wis. Legislative Council, *Issue Brief: Wolf Delisting and Harvest Season* (Nov. 2020), available at [https://docs.legis.wisconsin.gov/misc/lc/issue\\_briefs/2020/environment\\_and\\_natural\\_resources/ib\\_wolf\\_ah\\_2020\\_16\\_11](https://docs.legis.wisconsin.gov/misc/lc/issue_briefs/2020/environment_and_natural_resources/ib_wolf_ah_2020_16_11).

<sup>19</sup> *Hunting and Trapping of Wolves: Hearing on SB 411 Before the S. Comm. on Natural Resources & Env’t.*, 2011 Leg., 100th Sess. 02:22:16 (Wis. 2012), <https://wiseye.org/2012/02/28/senate-committee-on-natural-resources-and-environment-part-1-of-3/> (“Senate hearing”).

<sup>20</sup> *Hunting and Trapping of Wolves: Hearing on AB 502 Before the Assemb. Comm. on Natural Resources*, 2011 Leg., 100th Sess. 04:02:00 (Wis. 2012), <https://wiseye.org/2012/02/01/assembly-committee-on-natural-resources-28/> (“Assembly hearing”).

<sup>21</sup> Assembly hearing at 04:02:57.

<sup>22</sup> Senate hearing at 02:24:14, 02:26:25.

full quarter of the pregnancy of bred female wolves.<sup>23</sup> His primary concern with this timing was that a hunt in January and February:

coincides precisely with the DNR’s annual census period for wolves. These surveys are crucial, they are crucial to gauge the future harvest levels and per the federal Endangered Species Act they are required for a full five years following federal delisting.<sup>24</sup>

Mr. Thiel noted that allowing a January and February hunt would interfere with DNR’s ability to “professionally manage this state’s wolf population,” as a January and February hunt “would knowingly interfere with [DNR’s] best tool in measuring the size of that population being so managed.”<sup>25</sup> He concluded by stating simply that “this season length is necessarily setting up the DNR for failure and it is certain to draw a lawsuit.”<sup>26</sup>

Others opposed a January and February hunt for the same reasons. For example, Representative Louis Molepske stated at the Assembly hearing that he had a constituent from his district “who now is part of this wolf management team and he strongly encourages the season to end on December 31st,” as this would “ensure for the annual winter census to occur,” and “this overlap going through February could be a challenge.”<sup>27</sup> Additionally, professional naturalist and volunteer wolf tracker Cindy Mueller testified at the Senate hearing.<sup>28</sup> According to her testimony, Ms. Mueller had been a professional naturalist in Wisconsin for more than 23 years, including 11 years working for the DNR at High Cliff State Park, and for more than 20 years had been a “citizen volunteer” contributing thousands of hours to the wolf recovery program, including as a population census tracker.<sup>29</sup> Ms. Mueller disagreed with extending the season through January and February, stating that the season “does fall right within the prime breeding season of January and February and early March” and, as the DNR has relied largely on volunteers to do the winter tracking census surveys, “to do the surveys right in the middle of wolves being pushed and moved around would be very counterproductive.”<sup>30</sup>

The Legislature understandably never discussed the implications of a hunt to be carried out *only* in January and February, as such a biologically unsound proposal was not—and would never be—proposed. But the Legislature *was* clear in its statutory directive that any lawful season *must* begin in the fall. If the DNR were to establish a wolf season beginning in January or February, this would directly violate the statute’s unambiguous language that any wolf season must start in November, and undermine the DNR’s credibility as an agency able to consistently or responsibly monitor and

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<sup>23</sup> Senate hearing at 02:26:58.

<sup>24</sup> *Id.* at 02:27:11.

<sup>25</sup> *Id.* at 02:27:31.

<sup>26</sup> *Id.* at 02:27:43.

<sup>27</sup> Assembly hearing at 01:46:23.

<sup>28</sup> Senate hearing at 02:42:00.

<sup>29</sup> *Id.* at 02:42:30.

<sup>30</sup> *Id.* at 02:45:00.

manage its wolf population, especially during the sensitive period following federal Endangered Species Act delisting.

### **III. DNR Must Amend the Wisconsin Wolf Management Plan Prior to Holding a Season**

In addition to amending its wolf hunt regulation prior to opening a wolf hunting and trapping season, so too must the Department update its decades-old management plan. To hold a season based on a plan with scientifically disproven management and population monitoring systems would be scientifically and legally unsupportable.

The Wisconsin Wolf Management Plan was published in 1999 and contains a 2006 and 2007 addendum.<sup>31</sup> The Plan was only intended to guide wolf management for 10 to 15 years, yet the DNR is still utilizing it more than 20 years later to make its management decisions, including setting quotas for a wolf season.<sup>32</sup> For the DNR to set a wolf hunt quota based on the current Wisconsin Wolf Management Plan would be unjustifiable based on the testimony and expertise of the DNR's own wolf managers and staff, in addition to the concerns of the legislators who created 2011 Wisconsin Statute 169.

#### **A. The Wolf Management Plan Contains an Unsupportable Management Goal**

The first glaring problem is the fact that the Wisconsin Wolf Management Plan directs the Department to manage wolves with the goal of bringing the Wisconsin wolf population down to 350 individuals.<sup>33</sup> As discussed at both legislative hearings, the controversial 350 management goal was set based on scientific assumptions that have since been entirely disproven.

Richard Thiel, in addition to warning of the DNR's legal vulnerability should it utilize a January and February hunt, also warned of the Department's legal vulnerability were it to continue to utilize a management goal of 350. At the Senate hearing, Mr. Thiel stated that to suggest shooting wolves down to 350 based on the current population size "is ludicrous."<sup>34</sup> He stated, as a co-author of the Wisconsin Wolf Management Plan, that the Plan was based on old data and "needs to be revised."<sup>35</sup> He explained in detail how habitat was modeled when the Plan was created and how wolf distribution and colonization had changed over time, invalidating that model.<sup>36</sup> While Mr. Thiel believed that wolves should be managed by "taking some wolves," he stated that "at this point in time 350 is unreasonable."<sup>37</sup> In his testimony at the Assembly hearing, Mr. Thiel stated that he was "very uncomfortable" with the discussions of bringing the wolf population down to 350, and was

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<sup>31</sup> See Wis. Dep't of Natural Res., *Wis. Wolf Mgmt. Plan* (1999 & Supp. 2007), available at <https://dnr.wi.gov/files/PDF/pubs/ER/ER0099.pdf>.

<sup>32</sup> See *Wis. Wolf Mgmt. Plan* at 8.

<sup>33</sup> See *Wis. Wolf Mgmt. Plan* at 3.

<sup>34</sup> Senate hearing at 02:34:00.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 02:35:55.

very familiar with how that goal was set “because I co-wrote it, and it is based on information that is 20 years old.”<sup>38</sup> He explained that, with 800 wolves and counting, “to promote pushing the population back to 350 is unrealistic” in the “political sense,” and that the State should “beware of lawsuits.”<sup>39</sup> Mr. Thiel warned of the state’s vulnerability to lawsuits, noting that the wolf hunt “has to be done with reason,” and urging the Legislature to let the DNR set population goals and “let them dodge these bullets,” rather than have the Legislature set the management goal itself, as lawsuits in state and federal courts would be coming.<sup>40</sup> He noted that wildlife population goals change as counting becomes more accurate and efficient, and that managing wolves down to 350 “is just not reasonable at this point in time.”<sup>41</sup>

At the Assembly hearing, Representative Chris Danou questioned the Department’s decision to manage to the goal of 350.<sup>42</sup> He explained that the 350 number was based primarily on a particular study’s assumptions about the relationship between wolf distribution and road density that was “not being proven that accurate.”<sup>43</sup> He also explained that as the wolves expanded their range, biologists saw wolves in new areas that the original study serving as the basis for the 350 management goal did not anticipate.<sup>44</sup> Tim Van Deelan testified at both legislative hearings in favor of the companion bills.<sup>45</sup> According to his testimony, Professor Van Deelan was a certified wildlife biologist and professor of wildlife ecology specializing in “harvest management” (determining sustainable offtake) who “consulted, served, and collaborated over the years” with the DNR, the Natural Resources Board, and several hunting groups, co-authored the Wisconsin Wolf Management Plan, and served on the Wolf Advisory Committee for approximately 10 years.<sup>46</sup> Prof. Van Deelan advised the Legislature and the DNR “to not tie [the 350 goal] too closely to a wolf hunt,” as to do so would “paint[] a great big red target on there in terms of vulnerability for people who want to challenge it on the basis of sustainability.”<sup>47</sup> He explained that scientists’ understanding of how the wolf population has grown since the 350 number was posited had changed, and that at time of the 2012 hearing the 350 was “about a 20 year old number.”<sup>48</sup> He advised against attempting to achieve the 350 wolf goal which was, at that point in time, “questionable.”<sup>49</sup> Representative Danou reiterated that the information serving as the basis for the 350 number was “essentially 20 year old data,” and that “it’s been very clear” since then “that

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<sup>38</sup> Assembly hearing at 04:27:17.

<sup>39</sup> *Id.* at 04:27:53.

<sup>40</sup> *Id.* at 04:28:50.

<sup>41</sup> *Id.* at 04:34:02.

<sup>42</sup> *Id.* at 01:31:18.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at 03:22:50; Senate hearing at 02:46:33.

<sup>46</sup> *Id.*

<sup>47</sup> Assembly hearing at 03:27:05.

<sup>48</sup> *Id.* at 03:27:33.

<sup>49</sup> *Id.*

wolves can obviously colonize and live in areas with greater road densities than they expected.”<sup>50</sup> Prof. Van Deelan explained:

The 350 number was derived when we thought the carrying capacity for wolves in Wisconsin was dramatically lower than it’s turning out to be, and so if you set 350 as a goal and then choose to manage by setting quotas that would get to that number, pretty elementary harvest management theory would suggest that you run the risk of destabilizing the population.<sup>51</sup>

Prof. Van Deelan explained that he had been calculating carrying capacity of wolves for the DNR for 12 years, and that the carrying capacity for wolves in Wisconsin is “dramatically higher” than previously understood.<sup>52</sup> Therefore, Prof. Van Deelan opined, based on basic wildlife management science, using 350 as a goal makes the DNR legally “vulnerable” to those who are looking at sustainability.<sup>53</sup>

The Wisconsin Wolf Management Plan presents a map of primary and secondary wolf habitat in the state, noting that the remainder of the state “is designated as unsuitable, with less than 10% chance of supporting a wolf pack” based on a 1995 study.<sup>54</sup> As multiple legislators and wolf experts discussed at the legislative hearings, wolves are indeed now occupying much of the supposedly “unsuitable” habitat. The Plan set a management goal of 350 wolves based on its assumption that “500 wolves occurring on about 6000 mi<sup>2</sup> of suitable habitat seemed to be a reasonable estimate of the potential carrying capacity of wolves in Wisconsin.”<sup>55</sup> In contrast, the DNR’s 2020 Wisconsin Gray Wolf Monitoring Report included a minimum population count of more than 1,000 wolves, with contiguous wolf pack range estimated at 23,313 mi<sup>2</sup>.<sup>56</sup> To set a wolf hunt quota under the 1999 Management Plan—when the current population is estimated to be *more than double* what the Plan assumed was possible, and when wolf range is *nearly four times* what the Plan assumed was possible—would be entirely arbitrary and capricious. The 2006 and 2007 addendum to the Plan stated that the Wolf Advisory Committee reviewed the management goals and “generally agreed” that those goals “continued to be reasonable” at that time, noting that “[c]arrying capacity assessments continued to suggest a potential biological capacity for about 500 wolves.”<sup>57</sup> But even at that time the wolf population was estimated to be in the 500s, in stark contrast to the DNR’s current estimates.<sup>58</sup>

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<sup>50</sup> *Id.* at 03:31:06.

<sup>51</sup> *Id.* at 03:32:36.

<sup>52</sup> *Id.* at 03:33:30.

<sup>53</sup> *Id.*

<sup>54</sup> *Wis. Wolf Mgmt. Plan* at 14.

<sup>55</sup> *Id.* at 15-16.

<sup>56</sup> Wis. Dep’t of Natural Res., *Wis. Gray Wolf Monitoring Report 15 April 2019 Through 14 April 2020* 4 (2020), available at <https://dnr.wisconsin.gov/sites/default/files/topic/WildlifeHabitat/wolfreport2020.pdf>.

<sup>57</sup> *Wis. Wolf Mgmt. Plan* at 3 (2007 Supp.).

<sup>58</sup> *Compare id. with Wis. Gray Wolf Monitoring Report 15 April 2019 Through 14 April 2020* at 4.



Kurt Thiede, the Lands Division Administrator for the DNR, responsible for the Department's endangered resources and wildlife management programs, testified on behalf of the Department at both the Assembly and Senate hearings.<sup>59</sup> At the Senate hearing, Mr. Thiede testified that, until the Plan "would change through a new process," 350 is the number that the DNR would necessarily be using to manage wolves, as it was bound by the Plan.<sup>60</sup> In other words, he made clear that the DNR's wolf quotas would be inevitably tied to the 350 management goal until the Plan was revised.

However "ludicrous" and "unreasonable" the prospect of utilizing the 1999 Plan was in 2012, it is even more so now. However big a "red target" was on the Department in 2012, that target has only grown bigger and redder.

#### **B. The Wolf Management Plan Is Based on Outdated and Inaccurate Monitoring Methods**

The second glaring problem with setting a 2021 wolf season under the current Wolf Management Plan is that the Plan is based on a method of counting wolves that the DNR admits is no longer valid. Therefore, the DNR must amend the Wisconsin Wolf Management Plan to replace the methods for monitoring the wolf population, and must adjust any management goals accordingly.

Under the Plan, "[m]anagement activities for Wisconsin's wolf population shall be based on a late winter count."<sup>61</sup> The Plan laid out how this count should be done, including the late winter volunteer census surveys initiated in 1995.<sup>62</sup> However, the Plan was only intended to be utilized for 10 to 15 years, and recognized that, as the wolf population grew, monitoring methods would need to expand and change.<sup>63</sup> The Plan identified future research that would be needed upon state and federal delisting in order to "safeguard the wolf population and develop/evaluate future wolf management practices."<sup>64</sup> These needs included "[d]evelopment of reliable, but more economical wolf census techniques to accurately document numbers and distribution."<sup>65</sup> Indeed, the way that wolves in Wisconsin are counted has stirred much debate at Wolf Advisory Committee meetings.

The DNR recently decided to move away from the late winter count mandated by the Plan and toward a different method for estimating Wisconsin's wolf population, recognizing that the minimum late winter counts conducted since 1979 are unsupportable and inaccurate with a wolf population the size of Wisconsin's. Keith Warnke, Administrator for the DNR's Fish, Wildlife, and Parks Division, recently presented on this change in methodology at a Natural Resources Board

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<sup>59</sup> Assembly hearing at 01:14:55; Senate hearing at 01:53:01.

<sup>60</sup> Senate hearing at 02:09:25.

<sup>61</sup> *Wis. Wolf Mgmt. Plan* at 4.

<sup>62</sup> *Id.* at 19-20.

<sup>63</sup> *Id.* at 8, 20.

<sup>64</sup> *Id.* at 29-30.

<sup>65</sup> *Id.* at 29.

meeting.<sup>66</sup> Mr. Warnke stated that “we’re moving now to a new method for estimating the wolf population,” as the DNR “used a minimum count model in previous years since 1979,” but was “now moving to an occupancy and abundance model” similar to the methods being used in Montana and Idaho.<sup>67</sup> He stated that the reason for moving to this new method is that it is “reliable and more effective and much more cost efficient” than the minimum population estimate method.<sup>68</sup> He explained that the old method of counting wolves is “very possible when the population is small, but it’s really not intended for larger populations of wolves” like the population that currently exists.<sup>69</sup> The DNR was “confident that moving to this new model we will have better more reliable data collected in a more efficient manner.”<sup>70</sup>

The Department has decided to utilize a new method for monitoring wolf populations that is outside of what the Management Plan anticipates and has acknowledged that the old method of counting wolves is currently unreliable and inaccurate at this point in time. The Department must therefore revise the Plan to account for its new methodology prior to setting a wolf quota. Any quota currently set based on minimum late winter counts would be arbitrary and capricious as based on methods that the DNR itself has admitted are currently inaccurate. And any quota currently set based on the new occupancy and abundance model—without first amending the Plan—would be inconsistent with the Plan.

Lastly, if the DNR intends to move forward with its new methodology, which will *necessarily* create population numbers higher than its old methodology, it *must* recalibrate its management goals accordingly. As Mr. Warnke explained to the Natural Resources Board, the DNR would “expect that the minimum population count—the old model—would be less than the occupancy abundance estimate, because that old model was a minimum count. The new model is a population estimate,” and “certainly an entire population estimate is going to be more than just a minimum count.”<sup>71</sup> The Wisconsin Wolf Management Plan’s management goal of 350 was based on the methodology of the minimum count, which would necessarily result in a lower wolf population. If the DNR is to change its methodology to one that would necessarily result in a higher wolf population, it must adjust its management goal proportionally up to account for this change. Federal courts have recognized the necessity of this same type of “recalibration” with respect to state plans for hunting of grizzly bears recently delisted under the federal Endangered Species Act.<sup>72</sup>

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<sup>66</sup> Meeting of Wis. Natural Res. Bd. 02:49:23 (Sept. 23, 2020), <https://dnrmedia.wi.gov/main/Play/32627d2d65ad47db8f29ac686d05e75a1d?catalog=9da0bb432fd448a69d86756192a62f1721>.

<sup>67</sup> *Id.* at 02:52:38.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.* at 02:55:28.

<sup>71</sup> *Id.* at 02:54:58, 02:55:21.

<sup>72</sup> *Crow Indian Tribe v. United States*, 965 F.3d 662, 680-81 (9th Cir. 2020); *Crow Indian Tribe v. United States*, 343 F. Supp. 3d 999, 1016-19 (D. Mont. 2018).



#### **IV. Conclusion**

The Wisconsin DNR may not legally establish an early 2021 wolf hunt. To do so would violate the clear and unambiguous language of 2011 Wisconsin Act 169, as amended, which requires any lawful wolf season to begin in November. The DNR's regulation governing its wolf season, EmR1210, also conflicts with the language of the statute, and to implement a wolf hunt under the auspices of an unlawful regulation would be illegal. The Department must also amend the Wisconsin Wolf Management Plan prior to initiating a hunt. Any quota set pursuant to that Plan would be legally unsupported, as the DNR's own experts have testified that the Plan's management goals are based on disproved science and unreliable and inaccurate population monitoring methods.

We urge the Wisconsin DNR not to proceed with an unlawful January and February wolf season. Rushing to open a hunt will expose the DNR to unnecessary legal liability and undermine both its credibility and the legitimacy of its efforts to monitor and manage Wisconsin's wolf population in accordance with sound science. We look forward to your response to this letter and would welcome an opportunity to discuss these concerns further.

Sincerely,



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