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From: Amaroq Weiss <aweiss@biologicaldiversity.org>
Sent: Monday, February 22, 2016 1:50 AM
To: Sen Edwards C; Sen Courtney; Reiley Beth
Cc: Brett Brownscombe 2016+; Rep Kotek; SENR Exhibits; Sen Dembrow; Sen Olsen; Sen Prozanski; Sen Whitsett
Subject: HB4040 - Science and Public Process
Attachments: CBD Ltr to Committee - Feb 22 2016.pdf

Senator Edwards,

Attached please find information that was not adequately addressed in the February 16th and February 18th public hearings on HB4040.

In each of these hearings, the conclusions of two dozen expert scientists, and actions and omissions of concern by the Commission and ODFW in the public process were touched upon – but neither topic was fully amplified.

As this email and the attached letter are a direct follow up to these public hearings, I ask that they be included in the public record for HB4040 and that they receive your full consideration before any future action is taken on the bill.

I appreciated having the opportunity to testify at the February 16th hearing on HB4040. I indicated at that time that I am available to answer any questions you may have, and I remain available for that purpose. Please do not hesitate to contact me if you have questions regarding the information in the attached letter or about anything on which I testified.

Sincerely,
Amaroq

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Via Electronic Transmission

February 22, 2016

**Senator Chris Edwards
Senate Committee on Environment and Natural Resources
900 Court St., NE, S-411
Salem, Oregon 97301**

RE: Opposition to House Bill 4040 -- Scientists Agree That Oregon Wolves Remain Endangered and that Delisting is Premature

Chair Edwards and Members of the Committee:

On November 9, 2015, the Oregon Fish and Wildlife Commission (“Commission”) removed Oregon wolves from the state endangered species list. That 4-2 decision was contrary to the best available science and was made despite the fact that the five delisting criteria of the state endangered species act have not been met. House Bill 4040 would ratify this illegal decision and likely will preclude any judicial review of the Commission’s controversial action to prematurely strip wolves of state endangered species act protections.

The hearings held by the Senate Committee on Environment and Natural Resources on February 16 and 18, 2016 left out important information that legislators need to consider before allowing HB 4040 to become law.

Missing from this discussion is what the state endangered species act requires before a species may be delisted, and what scientists have to say about those requirements. These are substantive legal and science issues that must not be overlooked. Tragically, the Oregon Department of Fish and Wildlife (“ODFW”) and the Commission did just that. Their error would be compounded if HB 4040 becomes law.

It was clear from questions and comments from committee members that a majority of the committee believe it is good policy for the legislature to step in and ratify the Commission’s decision to state-delist wolves. However, having legislators make scientific decisions about

whether an endangered species is recovered is like allowing scientists to pass laws – it simply defies reason.¹

In this case, it would defy the expert opinion of two dozen scientists who wrote to the Commission and advised that the legally-required, scientifically-based five delisting criteria have not been met.

Page 16 of the wolf Plan provides as follows:

“The criteria for delisting come from the Oregon ESA and the Commission’s rules. In essence, they require the Commission to make the following determinations for delisting to occur:

- The species is not now (and is not likely in the foreseeable future to be) in danger of extinction in any significant portion of its range in Oregon or in danger of becoming endangered; and
- The species’ natural reproductive potential is not in danger of failure due to limited population numbers, disease, predation, or other natural or human-related factors affecting its continued existence; and
- Most populations are not undergoing imminent or active deterioration of range or primary habitat; and
- Over-utilization of the species or its habitat for commercial, recreational, scientific, or educational purposes is not occurring or likely to occur; and
- Existing state or federal programs or regulations are adequate to protect the species and its habitat.

These determinations must be based upon verifiable scientific information.²”

At the April 24, 2015 Commission meeting, ODFW presented its biological status review of the gray wolf and, as part of that review, presented results from a population viability analysis (PVA) that ODFW had conducted. A PVA uses quantitative methods to predict the likely future status of a population and is most often concerned with assessing extinction risks. In the status review, ODFW discussed the five delisting criteria and proclaimed that all had been met. ODFW used the results of its PVA to proclaim that the risk of conservation failure of wolves in Oregon and the risk of extinction of wolves in Oregon was *de minimus* (while admitting that if wolf deaths increased by just 5 or more animals per year, the risk would significantly increase to 50 percent).³

¹ Though the “whereas” clauses of HB4040 may not have the force of law, they are the equivalent of legislators stating they have considered all of the best available science and have come to a defensible conclusion that delisting requirements have been met.

² ORS 496.176; OAR 635-100-0112 Removing Species from State List.

³ ODFW first issued its gray wolf biological status review and PVA in late April 2015, indicating there were 81 observed wolves at that time. This was an increase from the 77 wolves noted in its 2014 annual report which had been released only two months prior in late February 2015. In October 2015, ODFW issued a revised status review and PVA indicating that as of July there were 85 observed wolves. However, in between July and October, three of those wolves were known to have died – one illegally shot and two found dead under suspicious circumstances.

In a subsequent section of this letter, I address the obfuscation by the agency and the Commission regarding the peer review process and the public comment process, but will first set forth for you what 26 scientists had to say about the ODFW gray wolf biological status review, the PVA and whether the delisting criteria have been met.

Comments Submitted by Outside Expert Scientists Concluded that the ODFW PVA was Fundamentally Flawed, the ODFW Gray Wolf Biological Status Review was Illogical, and the Delisting Criteria of the Oregon ESA were Not Met.

During the summer of 2015, conservation groups reached out to multiple scientists to ask if they would consider reviewing ODFW's gray wolf status review and PVA, and submit comments to the Commission providing their analyses of these documents and of ODFW's recommendation to delist. The scientists who were contacted and who wrote comment letters to the Commission are highly-credentialed in the fields of wolf biology, ecology, conservation biology, human-carnivore conflict, and population viability analysis, among others.⁴ We provide, below, direct quotes/excerpts from the letters these scientists timely submitted to the Commission.

1. An April 14, 2015 letter signed by 14 scientists⁵ specifically addressed delisting criteria #1 with this statement:

“[N]ow is not the time to delist the gray wolf in Oregon. Continued state Endangered Species Act (ESA) protections are essential for allowing existing populations to stabilize and expand into other suitable habitat. Milestones should be celebrated, but meaningful recovery is not complete in significant portions of suitable habitat in the state. Prematurely weakening gray wolf protections is likely to reverse years of progress, put recovery in jeopardy, and exacerbate conflict.”

Overall, ODFW thus upped its number from 77 to 85 by assuming without justification that every wolf accounted for in the previous year's annual count was still alive and still in Oregon. ODFW also did not revise its count downward to acknowledge the three known dead wolves.

⁴ Experts in conducting population viability analysis need not be experts on wolves nor on any given species but must have explicit expertise in population modeling and viability analysis. An expert in population viability analysis is qualified to analyze and critique any such study done on any species. What the expert is critiquing is whether the model used was sound, whether all pertinent parameters were included and input correctly, and whether the person conducting the PVA was clear on what s/he was doing or whether s/he omitted or confused essential factors and parameters.

⁵ Dr. Marc Bekoff, Ecology and Evolutionary Biology, University of Colorado-Boulder; Dr. Robert L. Beschta, Emeritus Professor, Department of Forest Ecosystems and Society at Oregon State University; Dr. Barbara Brower, Faculty Director, Portland Urban Coyote Project, Geography Department, Portland State University; Dr. Robert Crabtree, Founder and Chief Scientist Yellowstone Ecological Research Center / Research Associate Professor, Department of Ecosystem and Conservation Science, University of Montana; Dr. Rick Hopkins, Principal and Senior Conservation Biologist, Live Oak Associates, Inc.; Dr. Michael Paul Nelson, Professor of Environmental Philosophy and Ethics, Oregon State University; Dr. Luke Painter, Department of Fisheries and Wildlife, Oregon State University; Dr. Paul Paquet, Senior Scientist Carnivore Specialist, Raincoast Conservation Foundation; Dave Parson, MS, Wildlife Biologist – U.S. Fish and Wildlife Service, Retired; Dr. William J. Ripple, Distinguished Professor of Ecology, Oregon State University; Dr. Jeffrey W. Snyder, Department of Biology, Western Oregon University; Dr. Michael Soule, Professor Emeritus, Department of Environmental Studies, University of California, Santa Cruz, Co-founder Society for Conservation Biology; Dr. Adrian Treves, University of Wisconsin-Madison; Dr. Jennifer Wolch, Dean, College of Environmental Design, University of California-Berkeley.

2. **An 11-page October 25, 2015 letter written by Dr. Derek Lee, professional quantitative ecologist, expert population biologist and principal scientist with the Wild Nature Institute gave his expert analysis and conclusions regarding ODFW's wolf PVA, especially as relates to delisting criteria #1, #2 and #4, as follows:**
“It is my expert opinion that the existing PVA is fundamentally flawed and does not provide an adequate or realistic assessment of the Oregon wolf population to meet Criterion 1 or 2 or 4, therefore the delisting requirements are not supported by the results of the PVA as it was performed.”
3. **An October 25, 2015 letter submitted by Dr. Robert Beschta, emeritus professor in the Department of Forest Ecosystems and Society at Oregon State University, who has published multiple papers on the positive effects of wolves on ecosystem processes, wrote that for wolves to be a factor in the recovery of degraded aspen stands and riparian plant communities on public lands in Eastern Oregon – which is to say, play out their ecological function on the Oregon landscape -- , “I would strongly indicate that delisting this keystone species is a move in the wrong direction.”**
4. **An October 28, 2015 letter from Dr. Carlos Carroll, a wildlife ecologist from the Klamath Center for Conservation Research expressed concern that the status determination did not reflect the best available science on factors critical to delisting criterion #2. Dr. Carroll stated:**
“I have two areas of concern with the PVA and with the resulting conclusion as to the resilience of the current Oregon wolf population: (1) the manner in which the stochastic factors [such as disease outbreaks or prey decline] are parameterized in the PVA is overly optimistic; (2) the PVA does not incorporate the effects of small population size and isolation on genetic threats to population viability. Instead the status review relies on a brief qualitative discussion which does not accurately represent what is currently known about genetic threats to small wolf populations.”
5. **An October 27, 2015 letter from Dr. John Vucetich, Professor of Wildlife at Michigan Technological University, Dr. Jeremy Bruskotter, Associate Professor in the School of Environment and Natural Resources at The Ohio State University, and Dr. Michael Paul Nelson, Professor of Environmental Ethics and Philosophy at Oregon State University expressed deep concern that ODFW's status review had not been adequately vetted through an independent review process and that, in fact, ODFW's report included analyses demonstrating that delisting criterion #1 has not been met. The three professors noted as follows:**
“ODFW (2015) [status review] includes analyses which strongly suggest that wolves should remain listed at this time. . . . ODFW (2015 indicates that wolves in Oregon currently occupy *less* than 12% of their former range and only about 12% of current suitable range. . . . By that standard wolves are endangered because the species remains extirpated from nearly 90% of its currently suitable range (and extirpated from an even greater proportion of the range wolves occupied before human persecution.) . . . [I]t is untenable to think that being extirpated from nearly 90% of current suitable range (a subset of former range) would qualify the species for delisting.”

- 6. In a 7-page letter submitted October 28, 2015, Dr. Adrian Treves, Associate Professor of Environmental Studies and Director of the Carnivore Coexistence Lab at the University of Wisconsin-Madison commented on the failure to meet delisting criterion #1 regarding significant portion of range and of the inadequacy of existing regulatory measures to meet delisting criterion #5. Specifically, Dr. Treves noted as follows:**

“The historic range of the wolf in Oregon was the entire state . . . the gray wolf is currently present in less than 6% of the state’s land area now (ODFW Review 2015) At a population size <85, the addition of a few extra wolf deaths in a year can stop or reverse population growth. As the ODFW 2015 Review noted, wolves are highly susceptible to human causes of mortality and many of these mortalities go undetected and unreported (cryptic poaching). The ODFW Review 2015 reported illegal take was the leading cause of death among wolves in a small sample of recovered mortalities. . . . If [the pattern we saw in Wisconsin after delisting] applies after delisting in Oregon, one should expect 34-41 yearlings and adult wolves to die in the year that follows. Most will go undetected. . . . In sum, the Oregon wolf population has not met the first criterion for delisting, whether measured by geographic distribution or population size. . . . The ODFW correctly identifies the major threat to wolf population viability is human tolerance manifested through illegal take (poaching) mainly . . . [but] the ODFW Plan 2010 and ODFW Review 2015 are not up-to-date on research relating to human tolerance for wolves. . . . There are over 100 scientific, peer-reviewed articles on human attitudes to wolves. . . . The ODFW Review 2015 does not cite a single one of those studies or anything by the leaders in the field, which suggests that the ODFW has not considered the scientific evidence for the major threat to Oregon wolves. Instead, the ODFW Review 2015 cites wolf biologists who have never collected human dimensions data when making a claim about human tolerance.”

- 7. A 4-page October 29, 2015 letter from Dr. Guillaume Chapron, Associate Professor in Quantitative Ecology at the Swedish University of Agricultural Sciences focused on the PVA which was conducted by ODFW and whether the delisting requirements could be assessed using ODFW’s PVA. Dr. Chapron found that the PVA was not statistically correct, was not properly validated, did not use realistic parameter values or scenarios and in fact was not the proper tool to reach conclusions on the long-term viability of Oregon wolves and hence meet the delisting requirements of the Oregon ESA, with special note of not meeting the requirements for delisting criterion #1. Dr. Chapron noted several key objections to the PVA and ODFW’s conclusions, as follows:**

“Importantly, it is not because the model was published in a peer-reviewed journal that this implies the model is validated or correct (see previous point showing it is not) and I recommend the OR wolf PVA and its R source code be peer-reviewed in an open and transparent process. . . . The PVA is parameterized with a very low poaching rate. This is not in line with what has been found in other wolf or large carnivore populations. Another critical assumption in the PVA is the annual immigration of 3 wolves in OR. This raises two questions. First, a population is generally considered as viable when considered as a stand-alone population and not through the regular addition of

individuals. Second, the persistence of this flow of immigrants is doubtful as, for example, adjacent states are attempting to dramatically reduce their wolf populations. . . . ODFW finds that the wolf is not now (and is not likely in the foreseeable future to be) in danger of extinction throughout any significant portion of its range in Oregon. . . . The reality is that the wolf is past being in danger of extinction throughout many significant portions of its range in OR because it occupies only 12% of its suitable habitat (so is extinct in 88% of its suitable habitat). The interpretation of OR ESA by ODFW is an illegitimate interpretation that implies the suitable habitat where the species has become extinct is no longer considered as part of the species range and included in recovery targets. This interpretation also runs contrary to recent scientific literature on significant portion of range.”

8. An October 29, 2015 19-page letter signed by seven scientists⁶ concluded that the five delisting criteria have not been achieved and/or are based on untested assumptions. The scientists commented as follows:

“Oregon considers their wolf population to be recovered in spite of evidence to the contrary, consisting of very low population count and habitat saturation. . . . The plan Oregon has developed is of questionable merit to maintain a viable population. . . . A weakness in many . . . recent state management plans is that the political process and special interest groups have promoted and fostered limited recovery actions for species. . . . It is important that Oregon in its planning and implementation avoid many of these problems exhibited by other states and regions, including removing protected status too early. [Regarding Criterion #1] The gray wolf in Oregon is more than ‘endangered’ in significant portions of its range; it is in fact absent from 88% of suitable wolf habitat in the state of Oregon . . . Oregon’s suggested MVP [minimum viable population] not only is inadequate to protect the species, but if kept this low it will not serve as an effective source of dispersers to fill the rest of the suitable wolf range in Oregon. . . . [Regarding Criterion #2] [T]he future reproductive potential of Oregon’s wolf population and its ability to increase is unknown. . . . At this stage of the recovery for the population in Oregon, it is too early to determine or predict its future reproductive potential with any certainty as well as the key factors that may influence it. It is not known with certainty if the species’ reproductive potential is secure enough to maintain a viable population and how that may change if protected status is eliminated. . . . Oregon’s option for removal of the gray wolf from protection at this time does not provide safeguards for the genetic diversity of the population [Regarding Criterion #3] Western Oregon is heavily urbanized with a continuously growing human population, a frequent deterrent for many of the West’s exploited wolves as well as a potential for increased cause of mortality due

⁶Alex Krevitz, MA, Kunak Wildlife Studies; Dr. Anthony Giordano, Carnivore biologist and executive director, S.P.E.C.I.E.S.; Dr. Bradley Bergstrom, Professor of Biology, Valdosta State University; Dr. Rodney Honeycutt, University Professor and Chairperson of the Natural Science Division, Pepperdine University; Dr. Nathan Upham, National Science Foundation Postdoctoral Associate, Dept of Ecology and Evolutionary Biology, Yale University; Dr. Winston Smith, Principal Research Scientists, Institute of Arctic Biology, University of Alaska-Fairbanks; Dr. Steven Sheffield, Associate Professor of Biology, Bowie State University and Adjunct Professor at College of Natural Resources and Environment, Virginia Tech.

to transportation infrastructure and potential for higher levels of human disturbance. Conversely, rural Eastern Oregon is characterized by agricultural and timber resources where those interests frequently view wolves in a negative manner, which in some circumstances results in unregulated take. The importance of travel corridors between subpopulations of wolves in the State is also not well known or documented at this time due to their limited numbers. Travel corridors are considered essential for maintaining disjunct wolf populations. . . . [Regarding Criterion #4] Key habitat areas and components, as well as essential travel corridors and their level of protection, are poorly understood and should be addressed before delisting occurs. Poaching has been estimated to comprise 30% of known mortality in some wolf population. . . . [Regarding Criterion #5] Setting the regulatory environment to increase ‘take’ or modifying the current status of protected habitat when the population is at an early stage of recovery is not justified for meeting a goal of maintaining a viable population. There are many examples where wolf populations have declined or where recovery has been delayed/slowed due to a lack of or limited government protection.”

To sum up, nearly every one of the letters described above commented on the failure to meet the delisting criteria set forth in the Oregon endangered species act. Each of these letters were submitted in time to make the October 30th comment deadline which ODFW announced in a public email sent out October 14th. Yet the Commission paid no heed whatsoever to these comment letters that were submitted by outside experts.

Instead, as described below, in mid-October, ODFW finally decided they should have their work product reviewed by scientists who don’t work for ODFW. The agency contacted eight scientists and asked them to provide ODFW with comments on the PVA only, expressly requesting that the scientists *not* comment on wolf delisting. ODFW asked the scientists to provide their comments to ODFW by November 5 -- one week *beyond* the comment period deadline that the public had been advised of by ODFW in its October 14th email. ODFW received comments back from only four of the eight scientists, all arriving late in the day on November 6. ODFW quickly reviewed the comments and sent them on to the Commission. The comments provided by the four scientists consisted of notes scribbled in the margins of the PVA. None of these scientists provided a detailed, multi-page analysis of the PVA, and none of them provided an analysis of whether the Oregon ESA’s five delisting criteria had been met.

It was not made known to the public that any outside scientists had been contacted by ODFW until Monday, November 9, *after* the Commission hearing was already underway. Members of the public learned of this development when ODFW announced it while making its presentation to the Commission. None of these comment letters had yet been posted to the Commission website for public review nor were they made available online until mid-way through the morning portion of the public hearing on November 9. When posted, they were given their own category titled “Science Review 11-6-15.” Also posted was a summary of those comments prepared by ODFW entitled “Scientific Review Summary.”⁷ When asked in the hearing by the

⁷ In stark contrast, the letters of the 26 outside expert scientists who had sent detailed, substantive analyses to ODFW in time to meet the comment period deadline were posted on the Commission’s website beginning on

Commission to describe who the four scientists were and their affiliations, ODFW staff replied that two were from Idaho (one from the Department of Fish and Game and the other a professor at University of Idaho), one from Oregon and the final one was the co-author of the PVA modeling system modified for use by ODFW.⁸ When asked in the hearing by the Commission to explain why ODFW chose these particular scientists, ODFW staff replied that it was because ODFW “knew them, had worked with them in the past.”

Obfuscation By the Commission and ODFW Regarding The Legally-Required Scientific Peer Review Process And The Legally-Required Public Comment Process is Not Conduct that Should be Ratified by Legislation.

During public hearings held on HB 4040 on February 16 and 18, your Committee on Environment and Natural Resources heard testimony that ODFW and the Commission failed to follow their legal obligation to have an outside peer review panel of expert scientists review ODFW’s data, Status Review and PVA. There was also some mention of obfuscation and confusion in the public process for commenting on the delisting consideration.

There were many oversights, omissions, highly questionable actions and perhaps even illegal maneuvers. Below is a chronological description of several events which transpired that are of grave concern, but this is by no means a complete list.

1. On Thursday, October 14, 2015, ODFW wolf biologist Russ Morgan sent a “Dear Constituent” email to many interested parties. We do not know the entirety of to whom this message was sent but based on its contents it appears to have been sent to “agencies, organizations, local governments, tribes, other states, and interested persons.” Mr. Morgan’s email advised that, with respect to the November 9th Commission meeting at which the Commission would be considering whether to delist wolves, all comments and materials *must* be submitted by October 30th.
2. On Friday, October 23, Nick Cady of Cascadia Wildlands sent an email to ODFW Wildlife Division administrator Ron Anglin. Mr. Cady’s email advised that conservation groups have reached out to scientists who are specialists in wolf and carnivore population viability, biology, genetics and ecology; that the scientists have been provided with copies of ODFW’s status review/PVA; that many have expressed strong interest and that ODFW will be receiving a number of comment letters from scientists prior to the November 9th meeting. Letters from interested scientists began arriving in the Commission’s comment letter email inbox starting on Sunday October 25, and continued

October 29, but were not indicated as being science reviews. Instead, their letters were combined with other comment letters from conservation groups, livestock associations and county commissioners, and were titled as “Attachment 5 Consultation” and “Supplemental Consultation.” Additionally, ODFW did not contact any of these scientists to discuss their concerns.

⁸ At the February 16, 2016 Senate Committee meeting, when asked by committee members where the scientists were from, ODFW staff said that they were “from everywhere – one was from Minnesota.” This is plainly incorrect, as can be seen from ODFW’s “Scientific Review Summary” which identifies the scientists by name and affiliation and is posted on the Commission website.

to arrive through Friday October 30th, the deadline specified by ODFW in its October 14th email.

3. On Monday, October 26, after many requests from conservation groups to meet to discuss the delisting consideration, ODFW met with several conservation groups in La Grande. At the meeting conservation groups asked whether ODFW was going to comply with the legal requirement of having an outside peer review done of ODFW's status review and PVA. The groups were informed by ODFW that the agency believed it was under no obligation to do so.
4. On Wednesday afternoon, October 28, a member of the Center for Biological Diversity contacted the Commission's assistant Michelle Tate, by phone, to learn what date comment letters and materials were due, and was informed by Ms. Tate that only comment letters that had been submitted by the day prior (Oct 27) would be given to the Commission in advance of the November 9th meeting and that any comments that came in after the 27th would not be given to the Commissioners until the morning of the hearing. Very upset at learning she may have missed the comment deadline, our member contacted me to relay the conversation she had just had with Ms. Tate.
5. On Wednesday late afternoon, October 28, I left a voicemail message and sent an email to Ms. Tate noting that Mr. Morgan's October 14th email had notified the public that the comment deadline was October 30th, and that all conservation groups and our members had been relying on that advisory to get comments in by October 30th so that they would be provided to the Commission prior to the November 9th hearing, to ensure the Commissioners would have time to read the comments in advance of making their decision. I requested assurances that any materials submitted through October 30th would be received by the Commission in advance of the November 9th meeting. The following afternoon, Ms. Tate replied to my messages, noting that she was not aware of that timeline; she apologized for confusing our member and indicated that all materials submitted through October 30th would be given to members of the Commission at COB that day.
6. Even prior to Ms. Tate replying to my inquiry, however, on Thursday morning, October 29, ODFW issued a news release indicating that they were recommending to the Commission that wolves be delisted. This public recommendation was issued *before* the official public comment period of October 30th had closed and before ODFW could take into consideration all of the public comments received through October 30th. And even though they were already announcing their recommendation to delist, the October 29th, ODFW news release stated that public comments could be submitted until November 6.
7. To our knowledge, none of the constituents who had previously been informed by ODFW (via Russ Morgan's October 14th email) that the comment submission deadline was October 30th received a follow-up email announcing an extension to November 6th. Thus, the new deadline in ODFW's news release appears to have been created solely for the purpose of being able to say that comments of scientists ODFW solicited at the last minute arrived on time.

8. We are aware that one interested scientist's letter, from Dr. Robert Beschta, which was submitted by Dr. Beschta to the Commission on October 25 does not appear in any of the Commission's posted links, but for the fact that we resubmitted it as part of a packet of comments and materials from the Pacific Wolf Coalition on October 29th, which does appear in the links. Had the Coalition not resubmitted Dr. Beschta's letter, it would not appear as part of the comments on record. This missing comment letter has us deeply concerned there may be other comment letters that were submitted which may not have been made part of the record.
9. As of the start of the November 9th Commission meeting, no conservation groups nor member of the public were aware that at the last moment ODFW had reached out to eight scientists to review ODFW's PVA and that four of those scientists had responded late in the day November 6th, with comments scribbled in the margins of ODFW's PVA. No member of any conservation group, member of the public nor any outside scientist had an opportunity to read, evaluate or respond to the four scientists' comments, or to make any comparison in the depth, breadth or quality of these comments in advance of the Commission's November 9th meeting.

It is extremely troubling that:

- ODFW and the Commission issued news releases and emails, and gave out information via telephone, with conflicting deadline dates for public comments.
- Conservation groups had been, since April, urging the Commission and ODFW to have ODFW's status review, PVA and delisting recommendation peer-reviewed by an outside panel of expert scientists, as is legally required; yet, as late as October 26th, ODFW indicated it was under no legal obligation to get an outside peer review done, but then hastily contacted scientist friends to review its work.
- The review, which does not qualify as an outside expert peer review panel assessment, was not made known or available until the delisting hearing was already underway.
- ODFW announced its delisting recommendation prior to the close of the public comment period.
- In the Commission's online posting of materials, the four brief assessments of ODFW's PVA made by scientists the agency was friends with are characterized as a "Science Review" while the extensive, comprehensive comments by 26 scientists the agency had not previously worked with and which commented on the PVA, Status Review and delisting criteria are not characterized or identified as being scientific reviews.

ODFW's last-minute solicitation of abbreviated comments, from scientists they contacted because ODFW knew them and had worked with them previously in no way constitutes what any reputable scientist, professional scientists' association or scientific journal would find to be a

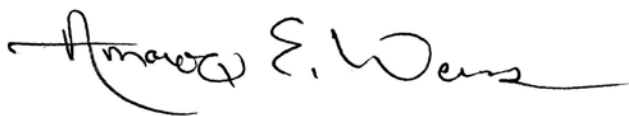
legitimate outside expert scientist review panel. And ODFW's and the Commission's disregard for the public process is a slap in the face to every Oregonian who has had interest in this issue, whether pro or con.

On February 15, 2016, The Register-Guard published a guest viewpoint piece written by Dr. Adrian Treves, one of the two dozen scientists who had evaluated ODFW's status review, PVA and delisting recommendation. In his opinion piece, Dr. Treves states: "Determining what's the best available science for a policy decision isn't a matter of voting for your favorite science. Multiple, qualified scientists conduct a careful review to interpret the quality and quantity of the evidence used to support a decision. The state Department of Fish and Wildlife and the state Fish and Wildlife Commission appear to have ignored the quality of the evidence despite ample, timely warning. . . . Fish and Wildlife got the evidence flatly wrong and didn't communicate with most (any?) of the corresponding scientists to understand how to fix the mistakes. . . . I heard from 23 of the 25 scientists opposed to delisting that neither the state nor the commission ever contacted them about their recommendations. Ignoring one scientist might be excusable, but ignoring so many who cited flaws in the commission's evidence is worrisome. . . . For more than a century, our states' courts and statutes have recognized wild animals as a public trust. Think of wildlife as a legacy for future generations. . . . When politicians make their decisions immune to judicial review, they are saying, "We are not accountable for the public interest and the permanent wildlife trust."⁹

Conclusion

HB4040's enactment, which is intended by its proponents to preclude -- and in all likelihood would preclude -- judicial review of the Commission's actions and decisions is highly inappropriate. All of the information set forth above, and more, should be permitted to be reviewed by the Oregon Court of Appeal. We urge you to not pass this bill out of Committee.

Sincerely,



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⁹ Adrian Treves, *Wolf delisting decision not based on the facts*. The Register-Guard, February 15, 2016. <http://registerguard.com/rg/opinion/34040385-78/wolf-delisting-decision-not-based-on-the-facts.html.csp#>