

# **Public Correspondence**

**Public correspondence received  
as of April 7, 2011**





HORSE WRANGLERS IN OREGON

SFC-0051

ODFW Commission, Bill Fox

In regards to the Jan. 2011 - Vol. 13 - Issue 1 "Big Wildlife" sees ODFW to stop Black Bear Hunt!

DON'T STOP BLACK BEAR HUNTS! I am a hunter and have seen more bear sign this year than any other year. I also saw hardly any deer sign. The bears may be damaging the deer population b/c there are more bears today!

Sincerely, Yvonna K. Gresham, OR

RECEIVED

JAN 10 2011  
ODFW Commission  
1300 Gresham Ave. N.E.  
Salem, OR 97303-4924



PLEASE DO NOT WRITE BELOW THIS LINE



**Michelle Tate**

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**Subject:** FW:

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**From:** Nicki DAVIS [<mailto:turtlefrog2@msn.com>]

**Sent:** Tuesday, December 28, 2010 9:38 PM

**To:** [odfw.commission@state.or.us](mailto:odfw.commission@state.or.us)

**Subject:**

Dear ODFW Commission,

I support Black Bear hunting and encourage the commission to keep the tag availability and season dates at current levels or greater. With less than 10% of the estimated population being harvested annually, the state's population is at an obviously viable level. Personally, I have seen more Black Bears in the last few years by far...there are simply lots of bears running around this state.

Secondly, the non-hunting public has every right to an INFORMED opinion and input regarding the draft of the Black Bear plan; however please keep in mind that many of those opinions come from citizens living in areas not effected negatively or positively from increased or decreased bear populations. The Black Bear Plan should be crafted by trained professionals, and any plan developed should be built upon a foundation of maintaining a population for hunting both now and for many years to come. We have already have a big problem with cougars in this state...we don't need to lose any more opportunities to the anti-hunting community.

Thanks,  
Chris Davis

**Michelle Tate**

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**Subject:** FW: Black bear plan.

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**From:** Brandon Becker [<mailto:brbecker1@yahoo.com>]

**Sent:** Monday, December 27, 2010 8:30 PM

**To:** [odfw.commission@state.or.us](mailto:odfw.commission@state.or.us)

**Subject:** Black bear plan.

To whom it may concern:

I read yesterday's Mail Tribune article *Conservation Group Threatens ODFW with lawsuit* by Mark Freeman and would like to express my opinion.

Should you conduct a public-opinion survey about bears I would be willing to participate.

I am an outdoorsman and native Oregonian. I spend a lot of time on both public and private lands in Oregon and have seen no evidence of a reduction or shortage of black bears. In fact I would say the opposite is true. I would encourage the commission not to adopt decreased tag levels for black bear or to reduce black bear hunting opportunities in any way.

I understand the difficulties you must face working toward a healthy balance of all of Oregon's wildlife while organizations like Big Wildlife work so hard against you. In the article Spencer Lennard said falling behind on the Black Bear plan is "not respectful to wildlife and the public." On the contrary I think it is very respectful to wildlife, and to the public, to focus your resources first where they are most needed. That is to say in favor of species who's numbers truly seem to be in decline such as is the case with Blacktails.

*Thank you,  
Brandon Becker*

[www.picaresquegent.etsy.com](http://www.picaresquegent.etsy.com)  
(541)844-8145

**Michelle Tate**

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**Subject:** FW: ODFW Black Bear Plan

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**From:** Andy Bodeen [<mailto:wbymaghnr@gmail.com>]

**Sent:** Tuesday, December 28, 2010 3:12 PM

**To:** [odfw.commission@state.or.us](mailto:odfw.commission@state.or.us)

**Subject:** ODFW Black Bear Plan

Dear ODFW Commission,

I support Black Bear hunting and encourage the commission to keep the tag availability and season dates at current levels or greater. With less than 10% of the estimated population harvest annually the state's population is more then sustained at current levels.

Secondly, the non-hunting public has every right to an INFORMED opinion and input regarding the draft of the Black Bear plan, however please keep in mind many of those opinions come from citizens living in areas not effected negatively or positively from increased or decreased bear populations.

Best Regards,  
Andrew Bodeen

**Michelle Tate**

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**Subject:** FW: Bear Plan and other Wildlife Issues

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**From:** Chad Gooch [<mailto:cgooch@huntair.com>]

**Sent:** Monday, December 27, 2010 12:56 PM

**To:** [odfw.commission@state.or.us](mailto:odfw.commission@state.or.us)

**Subject:** Bear Plan and other Wildlife Issues

Dear Commission Members,

Please do not alter any plans, goals or practices regarding the threat of lawsuit by Big Wildlife, C.A.S.H., Predator Defense, HSUS, or any of them.

Do not panic, rush your studies, make concessions, suspend seasons, alter tag numbers , or apologize for anything. We owe them nothing.

Oregon must be done with being bullied and take control of these sensitive wildlife matters NOW. These freedom thieves hide behind the guise of "conservation" and pretend to care, but all they care about is making money and pushing their short sighted agendas. These groups are nothing more than non profit enviro thugs that prey on the weak. They are empowered by seeing the usual apologetic responses and back peddling...do not give them the satisfaction. It is time to send them packing.

I am not alone in saying that I am tired of seeing these groups get their way through constant attacks, threats and lies.

Enough is Enough! It is time to stand up to them and let them sue if they so choose. It is time to pony up, show some backbone and do what is right for Oregon's wildlife and true conservationists.

Raising tag and license fees and then cowering to these gutter rats every time they threaten a law suit does not translate a message of strength, trust and support to the 200,000 hunters that are both really angry and genuinely concerned about the present and future condition of hunting and conservation in Oregon.

**Please stop the death spiral now** and make an example of Big Wildlife. Show them and the other misfits that this type of behavior will no longer be tolerated in Oregon.

Thank you and Happy Holidays,

**Chad A Gooch**  
**503-703-9714**

**Michelle Tate**

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**Subject:** FW:

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**From:** Lloyd Clark [[mailto:llyd\\_clrk@yahoo.com](mailto:llyd_clrk@yahoo.com)]

**Sent:** Monday, December 27, 2010 2:30 PM

**To:** [odfw.commission@state.or.us](mailto:odfw.commission@state.or.us)

**Subject:**

Dear ODFW Commission,

I support **Black Bear hunting** and encourage the commission to keep the tag availability and season dates at current levels or greater. With less than 10% of the estimated population harvest annually the state's population is more then sustained at current levels.

Secondly, the non-hunting public has every right to an INFORMED opinion and input regarding the draft of the Black Bear plan, however please keep in mind many of those opinions come from citizens who do not support hunting in any form. As we are aware and some citizens don't care we have a predator problem now lets not make it any worse.

Lloyd Clark



**Michelle Tate**

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**Subject:** FW: Black Bear Plan

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**From:** Dominic Aiello [<mailto:rider4lifez7r@gmail.com>]

**Sent:** Monday, December 27, 2010 9:43 AM

**To:** [odfw.commission@state.or.us](mailto:odfw.commission@state.or.us)

**Subject:** Black Bear Plan

Dear ODFW Commission,

I support Black Bear hunting and encourage the commission to keep the tag availability and season dates at current levels or greater. With less than 1% of the estimated population harvest annually the state's population is more the sustained at current levels.

Secondly, the non-hunting public has every right to an INFORMED opinion and input regarding the draft of the Black Bear plan, however please keep in mind many of those opinions come from citizens living in areas not effected negatively or positively from increased or decreased bear populations.

Best Regards,  
Dominic Aiello

**Michelle Tate**

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**Subject:** FW: new management plans for black bear

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**From:** Mick & Mary Lu [<mailto:m-mlvb@msn.com>]

**Sent:** Tuesday, December 28, 2010 8:17 AM

**To:** [odfw.info@state.or.us](mailto:odfw.info@state.or.us)

**Subject:** new management plans for black bear

Dear Sirs. I read today, an article from the the BigWildlife group, that says they speak for Oregonians concerning the managing of bear and cougars. Lets just put it all into one package. They want no hunting or control. My point is they do not speak for all Oregonians, only the vocal minority. Hunting laws for predators are not to liberal, as they state. Predation needs to be controlled to preserve other wild life and livestock. Look at the wolf problem in Idaho, Montana, and Wyoming. We are next, we need common sense and balance.

Mick Van Blokland

**Julie A Hansen**

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**From:** ODFW Commission  
**Sent:** Monday, January 03, 2011 4:33 PM  
**To:** Michelle Tate; Julie A Hansen  
**Subject:** FW: management plans  
**Follow Up Flag:** Follow up  
**Flag Status:** Red

Public Comments regarding bear management plan. -- Teri K

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**From:** John Graves [mailto:btfisher62@live.com]  
**Sent:** Saturday, January 01, 2011 6:56 PM  
**To:** ODFW Commission  
**Subject:** management plans

I just read the article in the Bend Bulletin (12/27) about the bear management plan that is going forward due to threat of lawsuit by the Big Wildlife groups Spencer Lennard. It's a real shame that these types of small, irresponsible, uninformed, antihunting groups, that tend to voice the policy line of the SPCA, can have an impact on wildlife management that can cause so many problems for the general population. I would hope that ODFW would come up with a plan for bear/ cougar management that allows harvest numbers that will keep them under control so the deer/elk populations can grow back to what they used to be. I would also like to see some means available to hunters to be able to harvest cougar that has something besides incidental harvest, ie: see one while hunting something else, which only takes out a few of the large numbers of cats.  
John Graves

**Michelle Tate**

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**Subject:** FW:

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**From:** ryan nawrocki [<mailto:rnawrocki1@hotmail.com>]

**Sent:** Monday, December 27, 2010 4:40 PM

**To:** [odfw.commission@state.or.us](mailto:odfw.commission@state.or.us)

**Subject:**

just wanted to write and say that I support bear hunting and hunting in general . I would really like to see a plan to aggressively increase harvest of black bears here in Oregon. large cities in Oregon affect many decisions here even if the issue at hand doesn't effect their lives daily . just want to be heard from the other side of the fence.

thank you  
Ryan Nawrocki

**Michelle Tate**

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**Subject:** FW: Bear management plan

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**From:** Mark Baker [<mailto:mark@amcraftcabinets.com>]

**Sent:** Monday, December 27, 2010 3:28 PM

**To:** [odfw.commission@state.or.us](mailto:odfw.commission@state.or.us)

**Subject:** Bear management plan

ODFW Commission-

I am writing regarding the Oregon Bear Management Plan. I would like to voice my support for not reducing or eliminating bear tags while the plan is being crafted. As part of the plan I support using population counts, harvest statistics and wildlife management science to set tag numbers. Thank you for your continued efforts in managing Oregon's fish and game resources in these challenging times.

Regards

Mark Baker

**Amcraft Cabinets**

(503) 472-0318

## Julie A Hansen

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**From:** ODFW Commission  
**Sent:** Wednesday, December 29, 2010 12:13 PM  
**To:** Michelle Tate; Julie A Hansen  
**Cc:** Thomas Thornton  
**Subject:** FW: Black Bear Plan

**Follow Up Flag:** Follow up  
**Flag Status:** Blue

For future Commission packet. Also, Mr. Markantes asks a question.

Teri Kucera

-----Original Message-----

**From:** Jason Markantes [mailto:jason@markantes.com]  
**Sent:** Tuesday, December 28, 2010 2:28 PM  
**To:** odfw.commission@state.or.us  
**Subject:** Black Bear Plan

Dear Commission:

I'm encouraged by the news that you're looking into a new plan for Black Bear hunting in Oregon. Looking forward to the results. One immediate concern I have is talk about suspending black bear hunting until the plan is enacted- I am completely against this idea, and would like to hear where you currently stand. With harvest levels at approx. 10% each year, the bear population is at a very healthy state and I don't understand why a drastic change is needed while a new plan is formulated.

Regards,  
Jason Markantes

## Michelle Tate

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**To:** Thomas Thornton; Timothy L Hiller  
**Subject:** FW: oregon black bear problem

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**From:** C M MARTELL [mailto:cindandmike@msn.com]  
**Sent:** Monday, January 17, 2011 1:56 PM  
**To:** odfw.commission@state.or.us  
**Subject:** oregon black bear problem

oregon officials working on black bear plan...headline news. "the killing of black bears is controversial"...imagine that...i'm guessing it is time to just allow mother nature free reign over oregon's wildlife...what do you say? you mr. anglin are opposed to hunter involvement since you are quoted saying "sport hunters can't meet management objectives" i'm guessing this is why your preference is hiring usda's wildlife services and the snare folks....keep in mind i was banned from the most productive method of removing problem bears...hounds..the issue was pursuing bears off the ownerships causing distress to the timber managers and the selling point for the timber managers to you was simple...snares are quiet...snares do not leave the ownership....snares kill everything boars...sows...cubs...even many unwanted species that should not be targeted. like the cougars above sweet home oregon. kind of out of sight out of mind attitude.

i just completed my twenty second annual fall bear damage control season at foris vineyards winery in cave junction oregon. i was granted a permit to use my hounds for bear. a conditional allowance was granted by the adjacent land owner. however the law reads if that land owner doesn't have damage i can not harvest the problem bear. what i managed to accomplish on this property was simple...i could have been like usda and just lured all the bears over onto to mr gerbers vineyard. once attached to the cable snare would spell death. by this i mean those sows work the perimeter only... HERE IS A FACT! IN TWENTY TWO YEARS NOT ONE SINGLE SOW KILLED ON THE PROPERTY..i think they are wishing for a free meal. THE BOARS DON'T ALLOW IT. the difference on timber lands is huge...a vast area that allows sows to roam freely and peel trees.i can lure a bear for about ten miles into a location of choice....how many bears do you think usda killed for taking the bait? when i used my hounds i actually took a bear from the base of a peeled tree not the other way around. i refrained from snares this fall since they represent the cruel and inhumane and unethical treatment to animals know to man.. and used the hounds to sort out the bears...what i have found over twenty two seasons is simple...the boars don't allow the sows on the property they are destroying. however the boars will actually tolerate the other dominate boars that eat wine grapes along side of the other dominate boars. examples include as documented by rosemary stussy from central point odfw....the gerber ranch yielded a boar 459 pounds...a boar 266 pounds...a boar 236 pounds...all of which did a collateral damage to the gerber vineyard of approximately 25 thousand dollars in damage.(no compensation or usda bailout for mr. gerber)

had i used the odfw/usda method this would look a whole lot different. i found there to be about 12 different sows and cubs around the perimeter of the gerber ranch, maple ranch, cedar ranch. these are all owned by mr. gerber. i easily could have killed them all and odfw has no one particular given biologist who actually understands black bear on its staff....you see you folks are all trained from a book....sadly enough it is this lack of knowledge and understanding that determines the fate of black bears in oregon not sound management practices. odfw's nancy taylor is all to eager to jump for the timber managers request for issuing kill permits during the spring damage months...i have my contacts within mr anglin who report the truth...you are now doing preventative maintenance in many of the locations simply because the n.w. timber managers control odfw...mr anglin like i have told you in our conversations...it is time to tell the n.w. timber managers no more...here is the bigger picture in my world...the n.w timber managers are restricting public access onto the ownerships. restricted deer and elk hunting. they will not tolerate a cougar being harvested in the name of management...for those who don't understand how a forester thinks...a bear peels a tree...it dies...a cougar kills deer and elk...it lives...a bobcat is a predator that can sometimes kill a fawn...it lives...a coyote is a killing machine and takes many deer...it lives. this has nothing to do with game management...it does however have to do with having your cake and eat it too....my findings are not based on a book sir...my findings are based on practical hands on experience over forty years of actual hunting bear and cougar...my issue with odfw is simple...you are bogus...you hate hounds and simply want to sell a product you know is inhumane but don't care. you raise license and tag fees and use the money for what? hiring our hunting out to usda? the latest report to me indicates you have mr. ted craddock killing radio collared cougar in n.e. oregon right now....toms, females, kittens alike and where they hit the ground they lay...this is killing...not game management sir!

mr anglin...you can continue to tell ousda how much you dislike me...i'm good with this...you are dead on the money...i am passionate about our animals in oregon...i will change this however necessary...you have killed management in the name of greed. it is time for some one to step up and over turn measure 18...don't and you are out of business...i'm siding with just shutting it all down and let mother nature work....this will result in our hunting rights returned quicker that repeating the same old plan and expecting different results. you sir should be under oath to manage our wildlife in a manner that is humane and ethical....now you get my point over the use of hounds...if it was true about my hounds and it wasn't...what is the method that replaced my hounds? steel for bears and bait to lure them in....government hounds mandated into killing females and kittens? not game management sir!

any one want to debate me and the truth are welcome to do so at any time...i have the fact sheets from odfw/ usda in hand and knowledge over forty years to back up my claims...

mike martell  
sweet home oregon  
541-367-1009



**Michelle Tate**

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**Subject:** FW: "Big Wildlife"sues to stop black bear hunt

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**From:** Larry C Millington [<mailto:fmilly@comcast.net>]

**Sent:** Thursday, January 13, 2011 8:26 AM

**To:** [odfw.commission@state.or.us](mailto:odfw.commission@state.or.us)

**Subject:** "Big Wildlife"sues to stop black bear hunt

I urge you to listen to us Oregon Hunters Assc. members and abide by our recommendations in this matter and to turn a deaf-ear to the liberals that want to control you all with their "pipe-dreams".

OHA is statewide; the liberals---if from Oregon at all---are a few too many in a few counties.

Larry Millington, Happy Valley,  
OHEIA # 12978

**Michelle Tate**

---

**Subject:** FW: Black Bear Plan

-----Original Message-----

From: Jason Markantes [<mailto:jason@markantes.com>]

Sent: Tuesday, December 28, 2010 2:28 PM

To: [odfw.commission@state.or.us](mailto:odfw.commission@state.or.us)

Subject: Black Bear Plan

Dear Commission:

I'm encouraged by the news that you're looking into a new plan for Black Bear hunting in Oregon. Looking forward to the results. One immediate concern I have is talk about suspending black bear hunting until the plan is enacted- I am completely against this idea, and would like to hear where you currently stand. With harvest levels at approx. 10% each year, the bear population is at a very healthy state and I don't understand why a drastic change is needed while a new plan is formulated.

Regards,  
Jason Markantes

**Julie A Hansen**

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**From:** Michelle Tate  
**Sent:** Monday, March 14, 2011 9:15 AM  
**To:** Julie A Hansen  
**Subject:** FW: Resend of Big Wildlife's Comments on Florence Proposed Rulemaking/ Public Hearing That was Cancelled on Repeal of the Deadline(s) for review of Wildlife Management Plans

**Follow Up Flag:** Follow up  
**Flag Status:** Blue

**Attachments:** OFWCletter5lh.pdf; ATT1277652.txt



OFWCletter5lh.pdf (100 KB) ATT1277652.txt (264 B)

Can you make sure that this is also included in Thursdays materials

-----Original Message-----

**From:** Teri Kucera  
**Sent:** Friday, March 11, 2011 1:56 PM  
**To:** 'wcarpenter@igc.org'  
**Cc:** Thomas Thornton; Michelle Tate  
**Subject:** FW: Resend of Big Wildlife's Comments on Florence Proposed Rulemaking/ Public Hearing That was Cancelled on Repeal of the Deadline(s) for review of Wildlife Management Plans

Mr. Carpenter:

I am forwarding your comments to Tom Thornton, Big Game Manager, and Michelle Tate, Wildlife Division Assistant Operations Manager. All comments for Wildlife Division exhibits may be forwarded to Michelle.

Michelle will make sure your comments are included in the next Commission packet when Exhibit C - Wildlife Management Plan Review Period is rescheduled. She will also notify you as soon as we know when Exhibit C is rescheduled.

Sincerely,  
Teri Kucera  
Supervising Executive Assistant  
Director's Office  
Oregon Department of Fish and Wildlife  
3406 Cherry Avenue  
Salem, Oregon 97303  
(503) 947-6033

-----Original Message-----

**From:** William Carpenter [mailto:wcarpenter@igc.org]  
**Sent:** Friday, March 11, 2011 9:52 AM  
**To:** Teri.Kucera@state.or.us  
**Subject:** Resend of Big Wildlife's Comments on Florence Proposed Rulemaking/ Public Hearing That was Cancelled on Repeal of the Deadline(s) for review of Wildlife Management Plans

Ms. Kucera,

I needed to guess at your email address to submit my client's comments. I had thought that Mr. Thornton was receiving the comments on this rulemaking, but based on the NPRM, you may be that person.

Below is the text of the first email, along with the appropriate attachments.

Thank you for your consideration of this matter.

Mr. Thorton and Ms. Kucera,

Attached is a pdf file containing Big Wildlife's written comments which were to be presented today' at the Oregon Fish and Wildlife Commission's meeting in Florence, along with oral testimony. Since greater events caused the cancellation of that meeting, and thus no presentation of these comments, please include them in the record for the rulemaking on the proposed rules which would repeal the rule(s) requiring timely mandatory reviews and revisions of Wildlife Management Plans.

Should this agenda item be rescheduled for the Commission's April meeting, I plan on giving oral testimony then.

Thank you for your consideration of these timely materials on this subject.

Call or respond if you have any questions

Bill Carpenter

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Also, please forward the message back to us and delete the message from your inbox and deleted items folder. Thank you.

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William C. Carpenter Jr.

Attorney at Law

474 Willamette St., #303

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**William C. Carpenter Jr.**  
**Attorney at Law**

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(541)484-4436

March 11, 2011

(Hand Delivered at Florence, OR Meeting)

Oregon Fish and Wildlife Commission (OF&WC) Commissioners  
c/o Thomas L. Thornton  
3406 Cherry Ave NE  
Salem, OR 97303

RE: Multiple Wholesale Amendment of OARs 635-120-0020, 135-0020, 160-0030,  
170-0015, 180-0015, 190-0030, and 195-0010

Dear Mr. Thornton and Commissioners:

My firm represents Big Wildlife, a project of Earth Island Institute, in connection with its protection and preservation of large carnivores in Oregon, and throughout the West. It is our understanding that the Board today is considering abolishing any legally mandated checks to insure that these species, as well as a number of birds and herbivores, have the best science utilized by the agency in their management plans. To be current, the plans should continue to be reviewed every five years. The two key concerns here are "best available science" and "public trust."

Big Wildlife respectfully urges the Commission to reject staff proposals and require that staff do a further analysis of the frequency of major scientific breakthroughs for each of the species. Also considered should be the timing of impacts, on a species-by-species basis, that have occurred by human encroachment of habitat areas before considering ending the Board's Plans' mandatory periodic reviews. This suggested additional analysis will insure that the Plans which govern the agency's conduct and policy will be reflective of current threats and harms on a timely basis. The last thing anyone wishes for is future economic train wrecks that accompany the listing of Oregon native species as endangered, where Oregon wildlife management fails again. Short term financial savings, without additional justification, will not save money in the long run. If species lose habitat and suffer population declines because of

implementing harmful policies, based on outdated science, that is a bad investment in the future.

Over the last twenty five years, this Commission has approved the five year review requirement in about 20 different instances, for nine different species and migratory game birds. See Exhibit A. The early approvals, at least for the Black Bear and the Cougar were non-controversial, with no public comments. Likely the remaining review requirements also passed with little fanfare. Now, with a very thin record, you are asked to undo those twenty-five years of Commission rulings. We do not argue that some of the requirements for some of the species may not be able to be lessened, but for the two species that are having the greatest increase in interaction with humans and encroachment to their habitats, Cougars and Black Bears, we believe that the current reviews have been too infrequent. Whether climate change has caused these increased interactions, or just more people living in the woods, it is not wise to remove the requirements for scientific review from all of the plans without further analysis.

#### I. This Action of Eliminating Timely Science Reviews Does Not Benefit the Wildlife Resource

A plan's objectives, for example the Black Bear Plan, are to recognize "the black bear as an important part of Oregon fauna, valued by many Oregonians," OAR 635-170-0005(1), and "to maintain healthy populations within the state into the future." (emphasis added). OAR 635-170-0005(2). Further, the Commission as to these Plans, is now required to "make decisions that affect wildlife resources ... for the benefit of the wildlife resources..... " ORS 496.012(7)(2010). Big Wildlife submits that without timely review of new wildlife science, reliance on an antiquated plan does not "maintain healthy populations into the future." Actually it puts those populations at risk.<sup>1</sup> Using outdated science here is much like the discredited autism-vaccination-program science, that current science has entirely debunked, but many people continue to rely on to their detriment. Without timely science updates, your management Plans will also become a liability, rather than an asset.

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<sup>1</sup> For example, with the Black Bear plan being updated, two relevant studies come to mind. First, the Crater Lake NP bear population study, and, a study on compliance with the recently promulgated hunter tooth reporting program.

## II. The Department's Short Term Solution for Restricted Resources Lacks Foresight

The main reason that the department seems to want to end its obligation is that “the department finds it necessary to commit staff to full-time planning reviews and revisions.” The department then suggests that such understaffing has caused the agency not to “focus on implementation and analysis” of plan actions. We suggest that to be implementing actions from scientifically antiquated plans is possibly more harmful than maintaining the status quo. The fact that these rule changes are deemed as being fiscally neutral, while technically accurate, its logic contradicts the Plans’ purpose altogether. The only way it is does not have a fiscal impact is that it assumes that past noncompliance is the norm. If compliance were actually required, then removing the deadlines would be a money-saving measure, because few staff would be required to complete the work, with no timeliness required. Perhaps a work-saving balance must be created, but such balance is not had by gutting rules that keep the plans scientifically current. Further, impact statement’s (C) is incorrect, as discussed below, the public is certainly likely to be affected by the abolition of these rules, if you assume that the public has a right to management plans based on timely wildlife science.

The department claims that Plan revisions will be replaced by annual briefings at your March meeting to “provide regular updates ... that will highlight the [Plans’] actions taken.” Again, however, this alternative process does not reflect a review of the best peer reviewed science to determine whether the premises and assumptions of a plan remain scientifically defensible. The mining of our ocean’s fishing resources is a good example of where years killing and depletion of these species went unchecked because, while plans existed, none of them were ever updated with current science and knowledge. The historic perceptions of wolves falls into the same category. Further, certain communicable respiratory diseases may sweep through a managed species, like Big Horn Sheep, so quickly that these mini-reviews would not even have a chance to evaluate the science and make Plan changes to accommodate the loss of a species.

Disassociating these species from new science is not the way to approach shortages in agency manpower, which is the real issue involved here. Regardless of whether five years is the best review time interval, or some other time may be more appropriate for certain species, doing away with ANY time period is not the proper approach, at least without much more evaluation of how fast the science is moving for any single species, and for the independent ecological impacts associated with it.

### III. Federal Scientific Plans Contain Mandatory Review for Updating Science

Two examples of this required current science are found in the Endangered Species Act, (ESA), (both Oregon and federal) and the Clean Water Act. As to Oregon's ESA, ORS 496.176 states:

Each [listed] species shall be reviewed at least once every five years to determine whether verifiable scientific information exists to justify it reclassification or removal from the list.

The federal statute essentially mirrors the Oregon statute, using the exact time period language, but uses the term "best available science," for the science standard for the review. Because listing is a mainstay of the ESA, so also is a timely review of the science creating the listing a key component of any valid listing program.

With regard to the Clean Water Act, because Congress realized scientific knowledge would expand on water contaminants and control techniques, it required that effluent limitations "be reviewed at least every five years" and revised if appropriate. 33 U.S.C. § 1311(d). For effluent limitations for toxic pollutants, it did the same, except that it shortened the review time to three years. 33 U.S.C. § 1317(a)(3). What has been said about these reviews are:

At these points the Agency will be required to justify its regulations in terms of the more extensive data developed since the regulations were first promulgated.

Assn. Of Pac. Fisheries v. Environmental Protection, 615 F.2d 794, 812 (9<sup>th</sup> Cir. 1980).

And, modifications will come about from these reviews, "from the march of time and scientific progress." American Petroleum Institute v. E.P.A., 787 F.2d 965, 974 (5<sup>th</sup> Cir. 1986). Here, the scientific progress must be allowed to be continued to be reviewed to protect the welfare of the species.

### IV. Ruling Today, Overturns Almost Twenty Past Rulemakings, Besides Violating Due Process, is Not Sound Logic and Violates the Public's Trust

Finally, Big Wildlife urges you to postpone your decision because you will be violating public notice and comment rules and citizens' due process rights if you make a decision at today's meeting before your advertised comment period has expired. As well as overturning almost twenty decisions of prior Commissions, as mentioned earlier.

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## V. Conclusion

The department has not provided you with sufficient justification for its proposed wholesale removal of its duty to periodically review the best available science to support the wildlife Plans. Further, the department's alternative is a far cry from the public involvement that timely revisions to the Plans should be entitled to. At a minimum, you should reject the rule changes until the department provides sufficient detail to justify not conducting scientific reviews at certain intervals for the eight managed species. And you should both table the vote until all comments are in, and until the department provides the Commission with justified individual rule changes based on the period of evolving science and ecological conditions that are appropriate for each species with a Management Plan. Agency convenience should not be the determining factor here, but an analysis of the harms and studies that each species is undergoing. The bottom line is that it is bad policy not to use current science; you should not remove the department's requirements to do so.

Sincerely,

S\ William C. Carpenter Jr.  
William C. Carpenter Jr.

Cc: Client

EXHIBIT A  
RULES WITH 5 YEAR REVIEW INCLUDED

NO.	DATE	SPECIES
1.	11/20/86	Big Horn Sheep and Rocky Mountain Goat Plan
2.	07/23/87	Black Bear (plus 2 revisions)
3.	12/28/87	Cougars (plus 4 revisions)
4.	07/30/92	Elk (plus 2 revisions)
5.	10/26/93	Migratory Game Birds
6.	02/14/03	Mule Deer
7.	08/18/04	Oregon Wild Turkey
8.	08/19/05	Greater Sage Grouse
9.	11/24/08	Black-tailed Deer*

Times 5 year review standard approved - 17

\* Language which allows Plan review to gauge implementation (first 5 yr); Plan revised in its entirety (10 yr. Out)