

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA

ATCHAFALAYA BASINKEEPER, et al.

Plaintiffs,

vs.

DEBRA HAALAND, et al.

Defendants.

Case No. 20-651-BAJ-EWD

DECLARATION OF DR. MICHAEL J. CAIRE

I, DR. MICHAEL J. CAIRE, hereby declare as follows:

1. I make this declaration on my own behalf. I have personal knowledge of each of the facts stated herein, and if called as a witness, would and could competently testify thereto.
2. This Declaration is being submitted pursuant to 28 U.S.C. § 1746.
3. I was a lifelong resident of Louisiana until my recent retirement. I was born in New Orleans, but I moved to West Monroe in 1976 where I practiced medicine until I retired in 2015. After I retired, I moved to Pensacola, Florida to reside near my children and grandchildren. I am now a resident of Pensacola, Florida, but I still own property (including my prior home) in northeast Louisiana, which I visit regularly throughout the year to participate in various outdoor activities I enjoy (*e.g.*, hunting, fishing, and wildlife observation).
4. I have spent much time in Louisiana gathering information and advocating for the Louisiana black bear. I have a strong interest in the Louisiana black bear (*Ursus*

americanus luteolus), and have been a vocal advocate for the bear and the preservation of its habitat for decades.

5. I am a member of many conservation groups, including Sierra Club and Atchafalaya Basinkeeper, and I was a life member of the former Black Bear Conservation Coalition.
6. I received my undergraduate degree in 1969 from the University of North Carolina Chapel Hill where I majored in chemistry for the first two years and finished with a major in zoology. I received my MD from Louisiana State University Medical School in New Orleans in 1973. I am a now retired Fellow of the American College of Obstetrics and Gynecology. Because of my educational and professional practice for over forty years, I have expertise and experience evaluating the best available science.
7. I have received numerous awards and commendations for my environmental activism, and in particular for my conservation work for the Louisiana black bear and its habitat, including the Louisiana Wildlife Federation Volunteer Conservation Award and the Chevron Conservation Award.
8. For most of my adult life I have been involved with environmental advocacy, and in particular the actions of our state and federal governments regarding our nation's wildlife and public lands. With respect to the Louisiana black bear, my involvement dates back to the early 1980s when I was involved with the movement to preserve the largest remaining bottomland hardwood forest of the Mississippi Alluvial Plain. This effort led to the preservation of the Tensas River National Wildlife Refuge and contiguous Big Lake Wildlife Management Area, which is now at the core of the effort to restore the Louisiana black bear.

9. Thereafter, I participated as a guest in 1988 in a meeting of the Louisiana Forestry Association's Wildlife Committee, at the invitation of Murray Lloyd, Chairman of the Committee at that time. In this meeting, we decided to work using Endangered Species Act processes to facilitate recovery of the Louisiana black bear. This ultimately led to the formation of the Black Bear Conservation Coalition (BBCC), led by Murray Lloyd, which was responsible for facilitating cooperation among diverse communities and governmental agencies, resulting in an increase in population figures, occupied habitat, restored habitat, and the study and scientific understanding of these issues. BBCC's approach to involve all interested parties to work together to achieve the goal of recovery of the Louisiana black bear brought together diverse interests unified by a common goal – restoration of the Louisiana black bear and its habitat. I became a life member of the BBCC and participated in many meetings. Under the guidance and leadership of the BBCC, and through the organization's efforts, I observed the expansion and restoration of bear habitat and population numbers, and the growth of scientific knowledge for this unique subspecies.
10. It is largely because of the efforts of the BBCC's cooperative, diverse approach to restoring the bear and its habitat that the U.S. Fish and Wildlife Service (the Service) now claims "recovery" of the bear under the ESA to justify delisting of this subspecies. Unfortunately, the Service's claim of recovery is premature.
11. I was very active with the Tensas Conservancy Coalition (TCC), where my work led to the purchase of the Tensas River National Wildlife Refuge (NWR) despite significant national and local opposition to increased federal control of local lands. Working with local sportsmen and concerned Louisianans, particularly in northeast Louisiana, the TCC

effectively mobilized political will to fully fund the purchase of the Tensas River NWR. In the wake of our success with the Tensas River NWR, then Governor Edwin Edwards established the contiguous Big Lake Wildlife Management Area (WMA). The successful establishment of both the Tensas River NWR and the Big Lake WMA provides essential habitat for the present Tensas River Basin Louisiana black bear population.

12. I have been mentioned in the Congressional Record citing my work in the establishment of the Tensas River NWR and in the protection of the Louisiana black bear. Appendix 1, Congressional Record Vol. 137, No. 73. Senator Johnson commented on my advocacy in Tensas with the TCC, applauding my efforts to protect the Louisiana Black Bear and to connect the bear to quality habitat in the newly established Tensas River NWR.
13. I believe that the relationship between habitat and species is inseparable, as evidenced by the significant time and effort I devoted to the BBCC, the TCC, and the preservation of the remaining forested Tensas tract in the vast and complex ecosystem of the Lower Mississippi River Valley. The biological importance of the forested wildlife habitat in the Tensas area cannot be overstated – the last Ivory Billed Woodpecker, sightings of Bachman’s Warbler, cougars and more all occurred within the Tensas tract, with reported sightings during the time I was an active advocate with the TCC.
14. I have spent over three decades studying the Louisiana black bear and visiting and observing its habitat in Louisiana, and plan to continue to do so. Every year, I spend most of November through January in Louisiana, duck hunting and generally enjoying the outdoors, including observing the bear and enjoying its habitat. I plan to return to Louisiana this August and November to enjoy the outdoors with my granddaughter, and to fish in the Bayou Teche area at various times as I typically do. My enjoyment and

ability to continue studying and observing the bear is diminished because the subspecies' survival hangs in the balance because of the premature removal of Endangered Species Act (ESA) protections.

15. According to the Post-Delisting Monitoring Annual Reports published by the Louisiana Department of Wildlife and Fisheries (LDWF), annual reported bear deaths appear to be increasing when compared to average annual reported deaths during the listing. These reports also indicate that estimated survival for the bear is declining, and in fact, the most recently published report (2019) shows that the female survival rate for the Upper Atchafalaya River Basin population has fallen below the minimum threshold to ensure survival. These trends in reported mortalities and survival estimates suggest that the removal of ESA protections has harmed the bear population and impaired its survival, and in turn has harmed my interests in observing and protecting Louisiana black bears.
16. The impact of the introduction of Minnesota bears into the Upper Atchafalaya River Basin (UARB) area in Louisiana in the 1960s was known and raised prior to the 1992 listing. Most of the Minnesota bears were introduced in the UARB area, a much smaller number in the Tensas River Basin (TRB) area, and none in the Lower Atchafalaya River Basin (LARB) area. Opposition to the listing of the Louisiana black bear was largely based on allegations that the taxon *luteolus* was invalid because the introduction of Minnesota bears had so hybridized the gene pool as to invalidate the listing of *luteolus* as a separate subspecies. At the time of the original listing, the field of taxonomy was shifting from focus on physical morphology (skeletal morphology) to molecular foundations for taxonomic classification. However, the specific knowledge of the genetic molecules, epigenetic attachments and proteins that were slowly gaining understanding

and use in taxonomic classification was specifically stated by the Service at the time of the listing to be beyond the present knowledge of the agency since the genetic profile of a known *U. a. luteolus* was unavailable during the process of the Service's evaluation of the Louisiana black bear (LBB) for the listing. AR 63; 002214. Appropriately, the Service conducted a literature review of the taxonomic history of the continental wide ranging American black bear (*americanus*) and its historically proposed subspecies.

17. Wendell Neal of the Jackson Field Office was directed to complete an examination of the skull morphology of museum specimens and of recent specimens since the introduction of Minnesota bears in the UARB and TRB. The study validated the taxon *luteolus* as a separate subspecies of American black bear, which has been accepted and continuously reaffirmed by the Service, until called into question in the delisting decision. The extensive study into skeletal morphology to evaluate the legitimacy of the "hybridization risk", including consideration of public comments on the scientific basis of hybridization, nevertheless led to the conclusion by the Service in the original listing that the risk was not only "unsettled" but that the issue was "unlikely to be settled" because of the complete lack of genetic knowledge of *luteolus*. Additionally, there was very little physical evidence that the Upper Atchafalaya River Basin population was in fact *luteolus*.
18. Ultimately, the original listing concludes that "the only practical means available for protecting any possibly remaining unique genetic material originally belonging to the native *U. a. luteolus* would be through listing and protecting the taxon now distinguished by cranial features as *U. a. luteolus*." AR 63; 002214. To the best of my knowledge, this was the first time in ESA history that protection of "possibly remaining unique genetic material" served as a specific reason for listing a species. It is clear that the intent of the

Service in listing the bear was to protect any remaining unique genetic material of the valid *luteolus* taxon.

19. The original listing recognized the “hybridization risk” and admitted that conclusions made with respect to LBB genetics and hybridization were made without any knowledge of the bears genetic profile. AR 63; 002213-002214 (discussing the Service’s findings regarding LBB genetics and the risk of hybridization). Based on my background and profession in the field of science-based medicine, I believe that the original listing represents the legitimate use of Service discretion in rendering a decision in the face of conflicting and incomplete opinions, facts, and data available at the time of the decision to list. The Service’s listing decision was entirely reasonable and supported in finding that, despite the uncertainties, based on the scientific evidence available at the time, namely morphological evidence, *luteolus* was a valid subspecies that should be protected under the ESA. However, I believe the delisting decision on the other hand represents the Service’s abuse of process in rendering a decision full of contradiction, not based on the best available science, not following proper procedure, and not supported by the record before it.
20. The delisting’s about-face finding that *luteolus* has recovered, yet simultaneous minimizing of the risk of hybridization that the Service created in establishing the Three Rivers Complex (TRC) population between the UARB and TRB populations, harms my scientific interests. New genetic studies are now available that resolve the question to the effect that the UARB bears are descended from Minnesota bears and did not intermix with *luteolus* populations until the Service established the TRC population. The Service continues to maintain to this day that *luteolus* is a valid taxon, based on its finding of

recovery of the subspecies, and yet it fails to own up to the errors in its management of the bear in facilitating hybridization of *luteolus* with the non-native UARB bears, and then relying on this connection to support its recovery finding. The Service's egregious scientific and management failures harm my interests in science-based and reasoned conservation.

21. The elimination of all ESA protections allows LDWF to institute hunting of bears in Louisiana. This is a publicly stated desire of LDWF. True scientific management of the bears in Louisiana has been severely hampered by FWS's gross mishandling of population genetics, and relisting may provide FWS its only opportunity to correct course.
22. The 2016 delisting decision negatively affects my recreational, conservation, and aesthetic interests. The delisting decision took away necessary protections for the remaining *luteolus* populations and their habitat, and allows for the ongoing and continued exposure of true native *luteolus* to the risks of hybridization with an introduced, non-native *americanus* population in the Upper Atchafalaya River Basin. I am concerned that the delisting decision has had, and will continue to have, serious impacts to the genetic integrity of *luteolus*, and on its habitat. I am also concerned that the decline in survival and rate of reported bear mortalities will result in reduced population numbers, impairing opportunities to observe and study the bear, and my conservation interest in its long-term survival. I am suffering and will continue to suffer recreational, conservation, and aesthetic injuries due to the diminished opportunities to observe and study Louisiana black bears in the wild and the reduction in protections of *luteolus*

habitat. These are actual, particularized, and concrete injuries specific to my interest and study of the Louisiana black bear.

23. My involvement with the Louisiana black bear will continue into the future. I intend to continue studying bear issues, including conservation, visiting and observing bear habitat, and working to restore the bear throughout its range. If the delisting were reversed and the Louisiana black bear relisted on the U.S. List of Endangered and Threatened Wildlife, my plans for additional study and observation would be greatly enhanced. Relisting would provide additional opportunities, (a) to protect and restore bear habitat that is not protected under the Louisiana Department of Wildlife and Fisheries' management plan for the subspecies post-delisting, (b) to connect populations of true Louisiana black bear, and (c) to allow for further population recovery to ensure long-term survival.
24. Louisiana and her citizens have a Constitutional right to hunt in Article I, § 27 of the State Constitution. It was the sporting community, particularly those in North Louisiana, that led to all the accomplishments that are being claimed for the "successful recovery" of the LBB. These successes, starting with the preservation of habitat, were all spearheaded by sportsmen, particularly those in north Louisiana. Sportsmen have been at the forefront of the Conservation Movement long before President Theodore Roosevelt forcefully inserted conservation of natural resources into national politics with his first Annual Address to Congress, and he continued to do so for the remainder of his life. Aldo Leopold started the entire field of professional science-based wildlife management by literally writing the first text book in this field titled "Game Management." It was Leopold, as a government hunter who shot the last wolf in the U.S. Southwest. It was this experience among others that led to his leadership in the moral, even spiritual, evolution

of wildlife management. Killing every wolf is no longer viewed as a desired achievement of the professional management of our nation's wildlife. Unfortunately, our national politics have not entirely caught up with either Aldo Leopold or his legacy. Ethical hunting is a form of communion that has been practiced by nearly all cultures of man. The BBCC started in the Wildlife Committee of the Louisiana Forestry Association, while the Spotted Owl Controversy raged in the Pacific Northwest and in the halls of Congress. It was the "FEED BEARS NOT LAWYERS" philosophy of inclusion of all involved that led to where we are today – working together to achieve a goal rather than extensive rabble rousing for political expedience, as had been the ticket to success. The BBCC did include in its goals for restoration a huntable population. Such a goal is absent from the Service's published Restoration Plan.

25. I was specifically forbidden to arrive at the Tensas River National Wildlife Refuge where the Secretary of Interior and other important people were to announce the successful delisting by recovery of the LBB, the Teddy Bear. The reason given was "for security reasons" for the Secretary of Interior. However, one could conclude that this was solely to avoid any negative light being thrown on a process started in preparation of an environmental "Victory Metal" for the next President of the United States; nearly everyone in Washington D.C. thought they knew who that would be. In its delisting and this case, the Service perpetuates this continuation of doubling down and never admitting mistake.

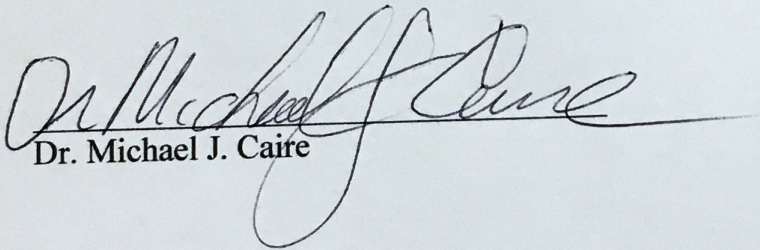
26. Where we are today is, at least in part, due to my direct participation in the political realities that are required to successfully implement the conceptual foundations of the ESA. That is to restore the species and the habitat in which it lives **based on the best**

scientific data available, and supposedly not involving political interference. A very important part of this “application of science” did involve “playing” with the media and political process. This legal proceeding is part of the larger picture of preservation and restoration of life on the planet. In this statement I am not denouncing the vacatur of the Service’s complete abandonment of the scientific foundation of the ESA in its rush to declare recovery of the LBB – at least that is my opinion, if not factually correct.

27. My recreational, conservation, scientific, and aesthetic interests will be harmed if the avoidance of the scientific foundations of the ESA, in this case genetics, of species management that the Service has allowed to inappropriately become a cornerstone of the alleged “recovery” is not redressed.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 19th day of July, 2021, in Pensacola, Florida.


Dr. Michael J. Caire