

# THIS WEEK



## EDITORIALS

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## Taken for a ride

*Underhand attempts by the US Congress to bypass regulatory decisions made by federal agencies erode science-based policy.*

When is science-informed policy not science-informed policy? When US lawmakers saddle must-pass bills with riders that bypass regulatory decisions.

Exhibit A: the removal of the grey wolves in several US states from the Federal List of Endangered and Threatened Wildlife. The Department of the Interior yanked these animals from the list, effective from 5 May, because it was ordered to by Congress, in language tacked onto the appropriations bill for fiscal year 2011 by lawmakers in western states. The wolf was arguably already on its way to delisting — the Department of the Interior wanted to remove it, but was being prevented by the courts. But the wolf's forcible removal from the list at the whim of a handful of politicians sets a dangerous precedent.

Exhibit B: the House version of the still in-process agriculture and food appropriations bill has an amendment that bans the Food and Drug Administration from using its funding to approve genetically modified salmon for human consumption. The Alaska congressman responsible for introducing the amendment was motivated not by aversion to genetically modified organisms, but by straightforward protection of his constituents. He sees the fast-growing salmon produced by AquaBounty of Waltham, Massachusetts, as a potential threat to wild-salmon fisheries in his state.

Are such moves legitimate? The Center for Biological Diversity, a wildlife-advocacy group in Tucson, Arizona, has already sued the government over the delisting of the wolf. The group argues that the move is an unconstitutional breach of US separation of powers, because action in Congress has effectively nullified rulings by the judicial branch.

And Ronald Stotish, chief executive of AquaBounty, said in a statement on 16 June, "Whether or not you support this transgenic salmon, we should all agree these types of shenanigans have no place in a complex scientific debate. These actions threaten the fundamental basis of a science-based regulatory process." The company says that the salmon amendment will be thrown out during the lawmaking process; it may well be right.

Philosophically, there may be nothing inherently wrong with Congress adding such riders to bills. After all, agencies exist to carry out the law as decided by Congress, and if the law changes, so does the business of the agency. There is even a seldom-invoked procedure, laid out in the 1996 Congressional Review Act, that allows Congress to cancel any rule made by any agency by joint resolution, just because it wants to. Ultimately, policy is meant to be the will of the people as expressed through the actions of a representative government.

Just because these riders are above board does not mean they are a good idea. There is no chance that a busy Congress will fiddle with all of the nearly 4,000 rules made each year by US government agencies, but there are always regulations that rise to public notice and offer traction to a lawmaker eager to dash off a rider and add it the nearest massive, essential bill. Congress already has constitutional routes to influence agency decisions, through budget processes and legislation

to frame the function of the agencies. Riders are sneaky short cuts that don't get debated properly and don't deserve to succeed. Whole agencies, from the Food and Drug Administration to the Environmental Protection Agency, were created because the people of the United States, through the medium of their elected representatives, decided that taking a scientific approach to certain decisions was a good idea. Instead of setting soot-emission limits for factories through the legislative branch, for example, the government of the United States, like that of almost every nation on the planet, decided to hand the job to informed experts.

**"The people of the United States decided that taking a scientific approach was a good idea."**

There is a rising anti-expert zeitgeist among US politicians, which could help to explain the legislative incursions into the business of agency scientists. Perhaps these incursions are also strikes at the political appointees who run the agencies, who are viewed by many as ideologically opposed to a Republican-heavy

Congress because they were appointed by President Barack Obama.

Would objecting to such legal riders be undemocratic — un-American, even? If today's voters prefer to make decisions without scientific input, should their wishes go unopposed?

No. Scientists are voters with a voice too. And most of them probably agree that policy set with scientific input is better than policy set without it.

Agency regulatory processes can be slow. They can be unsubtle and ignore the nuances of circumstances. They are, without exception, highly bureaucratic. But for many questions, from approval of new drugs to the management of fisheries, decisions made by agencies and informed by experts are better for everyone. ■

## Activation energy

*The US Department of Energy must learn from its shoddy response to misconduct allegations.*

The concept of a conflict of interest is crucial to the proper handling of alleged scientific fraud. Investigators appointed to review misconduct allegations should not have close links to either the complainant or the respondent scientists, and the most enlightened institutional policies include clauses to guard against 'real and apparent' conflicts of interest — intelligent phrasing that makes it possible to query the wisdom of an individual's appointment to an inquiry panel without having to question their objectivity.

Most policies guard less well against another kind of conflict of