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**U P D A T E**

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**January 27, 2004**

*This periodic publication is intended solely for the use of NESARC members.*

**Peer review and critical habitat top Pombo's ESA list.** House Resources Committee Chairman Richard Pombo (R-CA) is considering action on two ESA reform bills. Pombo is considering H.R. 1662, the "Sound Science for Endangered Species Act Planning Act of 2003," which was introduced earlier this Congress by Rep. Greg Walden (R-OR). That bill would require the Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) to give greater weight to field-tested and peer reviewed data. Sen. Gordon Smith (R-OR) introduced a companion bill, S. 2009, last week. Pombo is also looking at H.R. 2933, the "Critical Habitat Reform Act of 2003," a bill by Rep. Dennis Cardoza (D-CA) that would require the FWS to establish a recovery plan for species at the same time it designates critical habitat, as well as require the agency to more accurately assess the economic impact of critical habitat designations. According to Resources Committee sources, there is currently no timeline for consideration of either measure.

**"No Surprises" rule still in effect.** Reacting to a motion filed by environmentalists last month to clarify and expand the written opinion of U.S. District Judge Emmet Sullivan in the *Spirit of the Sage Council et al. v. Gale Norton* case, the Department of the Interior took the position that the No Surprises Rule remains in full force and effect. Further, DOI clarified that new incidental take permits can, and should, include a No Surprises assurance term. A separate NESARC communication earlier this month provided a more detailed update on the case, and may be found on the Coalition's website at <http://www.nesarc.org/media.htm>

**Court ruling favors New Mexico water users.** A federal appeals court this month threw out an earlier ruling that water imported from the Colorado River Basin for New Mexico's cities may be used to provide habitat for the Rio Grande's *endangered silvery minnow*. The decision vacates an opinion from this past June by the court's three-judge panel that supported a temporary injunction requiring the Bureau of Reclamation to make any water in the Rio Grande Basin, including Colorado River Basin water imported via the San Juan-Chama Diversion Project, available to fulfill ESA requirements for the minnow. The decision argued that any future appeal of the injunction, which expired at the end of 2003, would be superfluous. A copy of the decision may be found on the NESARC website at <http://www.nesarc.org/media.htm>

**FWS seeks proposals for funding through the Private Stewardship Grants Program.** FWS announced recently it is seeking proposals for private lands conservation funding through its Private Stewardship Grants Program. The program provides federal grants on a competitive basis to individuals and groups engaged in voluntary conservation efforts on private lands that benefit imperiled species including federally-listed endangered or threatened species as well as proposed, candidate, and other "at-risk" species. In May 2003, the Service awarded 113 grants totaling more than \$9.4 million to individuals and groups to undertake conservation projects for endangered, threatened and other at-risk species on private lands in 43 states. For more information, visit FWS's Private Stewardship Grants website at [http://endangered.fws.gov/grants/private\\_stewardship.html](http://endangered.fws.gov/grants/private_stewardship.html).

**Interior releases Platte River environmental impact study.** The Interior Department released a study last week assessing options to manage the Platte River and its tributaries that will balance both the water needs of people and provide habitat for endangered species. All four options listed in the study include the buying or leasing of water to increase water flow in the Platte River during some parts of the year and the purchase of land along the river for the first 13 years of the project. The plans aims to protect populations of the *whooping crane*, *interior least tern* and *pallid sturgeon*, all of which are on the federal endangered species list, and the *piping plover*, which is listed as threatened. The total cost of the options listed in the plan range from \$97 million to \$180 million. A decision on a final plan is not expected until June 2005.

**Petition to list eastern sage grouse rejected.** FWS has rejected a petition to list *eastern sage grouse* under the ESA, saying there is no evidence that they are a unique subspecies of other sage grouse found in the West. However, FWS said it would continue a preliminary review of other pending petitions involving the species as a whole. A finding on those petitions, including one filed last month by 20 conservation organizations, is expected by the end of March, the agency said. FWS was under a federal court order to complete its preliminary finding on the eastern grouse petition by early January.

**Southern California farmers owed \$26 million for water diversions.** Judge John Wiese of the U.S. Court of Federal Claims ruled recently that the federal government must reimburse two Southern California farm districts for water it diverted to protect endangered *Chinook salmon* and *Delta smelt*. The judge said the Tulare Lake Water Storage District and Kern County Water Agency are entitled to about \$26 million including legal fees and interest for water diverted to protect the endangered fish between 1992 and 1994. While supporters of the ruling believe water users should have ownership of the water they buy from the government and should be paid if the water is diverted for species protection, environmentalists believe such a determination will bring about an overabundance of new litigation to broaden this ruling to apply to a whole range of laws.

**Plan modifies protections of lynx habitat.** A draft environmental impact statement (EIS) for the protection of Canada lynx on federal lands released this month loosens some earlier limits on snowmobiling, logging and grazing in the species' habitats. FWS officials said the tougher restrictions on things such as mining, grazing, unpaved forest roads and packed snowtrails were not needed because they did not appear to pose any threat to the lynx population. But FWS officials said the EIS, which will affect 50 million acres of federal lands stretched across Alaska, Montana, Washington and Maine, includes guidelines rather than standards, and that the final plan could still include restrictions on some activities.

**Wyoming plan inadequate for delisting, FWS says.** Wyoming has failed to submit an adequate plan to protect the state's population of grey wolves, forcing FWS to delay plans to remove the wolf from the endangered species list, FWS Director Steve Williams said last week. Williams expressed concern about the state's proposal to consider some wolves as predators and some as trophy game, allowing potentially unregulated killing. Additionally, the proposals do not provide sufficient management controls to assure the Service that the wolf population will remain above recovery levels, according to Williams. Several Wyoming legislators have now vowed to draft a bill to be considered during the upcoming state budget session to address concerns raised by the FWS.