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**U P D A T E**

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**April 9, 2003**

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**Walden reintroduces sound science legislation.** Representative Greg Walden (R-OR) introduced earlier this week H.R. 1662, the “Sound Science for Endangered Species Act Planning Act of 2003,” aimed at mandating good science as the basis for ESA decisions. In addition to requiring peer reviewed science in ESA decisions and independent scientific review for all listings, the bill requires that federal agencies obtain data from stakeholders and use scientifically valid principles in all decisions. NESARC was a strong supporter of the bill last year (H.R. 2829, 107<sup>th</sup> Congress) and will support the legislation again as it moves forward this Congress. The bill currently has 17 cosponsors from both sides of the aisle.

**EPA changes tune on DoD environmental exemption debate.** EPA enforcement chief John Paul Suarez told the Senate Armed Services Committee last week that the agency fully supports a series of proposed environmental law exemptions for the Defense Department, shifting its message from statements prior to the start of the war that military readiness is not compromised by the laws. Suarez said the Bush administration proposal appropriately addresses military readiness and the protection of human health and the environment, and stated that the EPA and DoD developed the proposal jointly. Senate Environment and Public Works Committee Chairman James Inhofe (R-OK), who also sits on the Armed Services Committee, contend that the laws must be modified to counter the “unconscionable war on the military” being undertaken by environmental groups which have successfully challenged in court some DoD plans on environmental grounds. Republicans may attach exemptions as amendments to FY 2004 DoD authorization legislation or other legislative vehicles in the coming months, said an aide to Sen. Inhofe. Sen. James Jeffords (I-VT), Inhofe's predecessor as chairman of the Environment and Public Works Committee, said he and other opponents would try to block the maneuver.

**FWS testifies that court decisions drive agency priorities.** Fish and Wildlife Service (FWS) Director Steve Williams told a Senate panel recently that the Agency's priorities are being driven largely by lawsuits, court orders and settlements rather than what is most important biologically. At a Senate Environment and Public Works Fisheries, Wildlife and Water Subcommittee hearing, Williams testified that the FWS budget includes \$3.2 million more than last year's request to address listing actions required by court orders or settlement agreements. Williams said that, while the agency wanted to emphasize the recovery of species, litigation has consumed the majority of FWS' time. Subcommittee Chairman Michael Crapo (R-ID) expressed concern that the listing and recovery process are being driven by litigation and not science, which reflects the failures of the ESA. Sen. Craig Thomas (R-WY) spoke out against governing by lawsuits and urged support for legislation that he introduced in February that would revise the ESA by improving the listing and delisting process.

**Agency asks for delays in species, habitat protections.** FWS announced this week that, if judges do not grant the agency extensions for habitat protection plans for about two dozen endangered species cases, the Service will run out of money for endangered species listings and critical habitat designations by July of this year. The FWS still plans to meet goals for “high-profile species” like the *bull trout*, *Rio Grande silvery minnow* and *San Diego fairy shrimp*, said a FWS spokesman. But, the FWS needs more time and money to deal with other cases. Environmentalists maintain the FWS does not ask Congress for as much money as it needs to protect species and habitat. The FWS has

told Congress during several hearings over the past two months that it needs approximately \$20 million a year for the next six years to deal with backlogged ESA cases, significantly higher than the FY 2004 request.

**Chairman Pombo interviewed on Resources Committee agenda.** An interview with House Resources Committee Chairman Richard Pombo (R-CA) appeared in the March 22<sup>nd</sup> issue of *National Journal*, in which he discussed his immediate and long term agenda for the Committee for the first session of the 108<sup>th</sup> Congress. While the President's Healthy Forests Initiative and a comprehensive energy bill remain top priorities, ESA reform may be addressed as early as this summer. Chairman Pombo stated during the interview that, while he does not believe that a broad ESA reauthorization bill will move this year, he is optimistic about reforming habitat conservation plan and recovery plan processes, and reducing some of the conflicts that arise among local communities, cities, and private property owners regarding ESA implementation. Commenting on the environmental exemptions being sought by DoD, Pombo stated that, "if there is a problem with the way the law is being implemented, we ought to fix it for everybody." Finally, the Chairman discussed his ongoing support of property rights issues, and stated that he remains committed to looking at legislative reforms in this area.

**FWS and NMFS announce policy for evaluation of conservation efforts when making ESA listing decisions.** FWS and the National Marine Fisheries Service (NMFS) announced a policy last month that would help guide government, businesses, organizations, and individuals in their efforts to restore populations of declining species before they require the protection of the Endangered Species Act. The Policy for Evaluation of Conservation Efforts (PECE) is said to ensure consistent evaluation of conservation efforts when considering listing species under the ESA. The policy identifies criteria that the two agencies will use in determining whether conservation efforts, such as habitat restoration or protection, have contributed to the long-term survival of a species or has contributed to improving the status of a species to the extent that it should be listed as threatened rather than endangered. Links to the full policy in the *Federal Register* and a PECE fact sheet may be found at <http://endangered.fws.gov/>

**Pentagon chiefs told to look for exemptions to environmental laws.** Deputy Defense Secretary Paul Wolfowitz has ordered military service chiefs to provide examples in which President Bush could cite national security and exempt defense facilities from certain environmental laws. The move follows the administration's requests, made in the name of military training, that Congress ease laws governing endangered species, marine mammals and air and water quality at defense facilities. In a March 7<sup>th</sup> memo to the chiefs of the Army, Navy and Air Force, Wolfowitz called for greater consideration to requesting such exemptions in cases where the laws threaten military training and readiness. Congress rejected most of the military's requests for changes in environmental laws last year. The March 7<sup>th</sup> memo may be viewed at [www.peer.org/Military/Wolfowitz\\_memo.pdf](http://www.peer.org/Military/Wolfowitz_memo.pdf)

**Whistleblower says NMFS violated ESA when deciding how to protect salmon.** A NMFS biologist went public last month with assertions that the agency did not follow the ESA when deciding in 2001 how much water to release for *coho salmon* in the Klamath River Basin. The NMFS biologist helped prepare the 2001 biological opinion (BiOp) that told the Bureau of Reclamation (BuRec) how to operate the Klamath Irrigation Project so as not to jeopardize *coho salmon* in the river. The biologist said in a deposition for a lawsuit filed by environmentalists and fishermen that the Service never performed the scientific analysis necessary to verify that the water levels set in the BiOp would not jeopardize the continued existence of *coho*. He claims that NMFS knew some *coho* would be adversely affected, but never did the analysis to determine whether the number of fish harmed or killed would be enough to jeopardize the species as a whole. The Interior Department says it is not clear yet whether low flows in the river caused the fish kill. While an NMFS spokesperson continues to refute the idea that the fish kill would have been averted if the agency had acted differently, the biologist and others maintain that the fish kill is the result of the failure of the agency to properly analyze the potential impacts to the *coho*.