
U P D A T E

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

Support grows for sound science legislation. Representative Greg Walden's (R-OR) "Sound Science for Endangered Species Act Planning Act of 2003" (H.R. 1662) continues to gain support from members of the House of Representatives, due in part to the assistance of the NESARC membership. The hard work of our members that have met with Congressional staff urging support for the measure, as well as the many letters of support that have been generated for H.R. 1662, have resulted in support that continues to grow. The legislation, aimed at mandating good science as the basis for ESA decisions, now has nearly 50 cosponsors from both sides of the aisle. Many thanks to those NESARC members that have written letters and have met with Congressional offices to urge support for this legislation. Keep up the good work!

House Resources Committee reports military readiness legislation. The House Resources Committee last week passed H.R.1835, the "National Security Readiness Act of 2003," legislation that makes changes to the ESA and the Marine Mammal Protection Act (MMPA) to allow the military to train and test weapons systems while still protecting the environment and endangered species. Additionally, the measure includes language that would modify the conditions for all critical habitat designations, not just those on military lands. The Defense Department earlier requested a limited exemption from several environmental laws, including the ESA, on the grounds that enforcement interferes with training on military lands. H.R. 1835 was introduced on April 29th by Rep. Elton Gallegly (R-CA), and currently enjoys the cosponsorship of several Resources Committee members, including Chairman Richard Pombo (R-CA). A lengthy hearing was held a day before the markup, at which military officials, Administration representatives, and a panel of scientists offered testimony. It is currently uncertain which, if any, portions of this legislation will be included in the Fiscal Year 2004 defense authorization bill (H.R. 1588, S. 747) currently under consideration. For additional information, you may access the recently released NESARC Legislative Alert at <http://www.nesarc.org/1835alert.pdf>

House and Senate Armed Services Committees consider ESA reform language. Both the House and Senate Armed Services committees have considered including language amending the ESA in their versions of the fiscal year 2004 defense authorization bill. The Senate Armed Services Committee approved its version of the measure last week, which included the Pentagon's request to allow Integrated Natural Resources Management Plans to satisfy an ESA provision calling for "special management considerations or protection" of endangered species. The approved language also prevents designation of critical habitat on military lands, although it does not remove the ESA requirement for agency consultation on such lands. In the House Armed Services Committee, the Readiness Subcommittee did not include any aspects of the Pentagon plan at a markup on Friday, citing jurisdictional concerns with the House Resources Committee; however, House Armed Services Committee Chairman Duncan Hunter (R-CA) may include "modified versions" of proposed ESA changes in the full committee mark of the measure scheduled for this week.

DOI announces conservation banking guidance. The Interior Department has issued the first comprehensive federal guidelines designed to promote the establishment of conservation banks, which aim to ensure protection for endangered species that are adversely affected elsewhere. The banks are lands acquired by third parties, managed for specific endangered species and protected permanently by conservation easements. Banks may sell a fixed number of mitigation credits to developers to offset adverse effects on a species elsewhere. A copy of the guidance may be found on the FWS website at <http://endangered.fws.gov/policies/conservation-banking.pdf>

Rep. Gibbons reintroduces property protection legislation. Last week, Rep. Jim Gibbons (R-NV) reintroduced the “Property Protection and Encouragement Act” (H.R. 1965), legislation that would exempt military lands and private property from the ESA. Similar to legislation introduced last year by then-House Resources Chairman Jim Hansen (R-UT), the bill would also create an incentive program for private property owners with threatened or endangered species on their property to maintain or improve the habitat in exchange for payments from the Department of Interior. The bill has been referred to the House Resources Committee for consideration.

Judge rules that NW salmon plan is faulty. A federal judge ruled last week that government programs to protect threatened and endangered salmon runs in the Columbia River Basin do not meet requirements of the ESA. The U.S. district judge struck down the biological opinion for protecting Columbia Basin salmon that was issued in December 2000 by National Oceanic and Atmospheric Administration (NOAA) fisheries. The biological opinion, which focused on improvements to habitat, hatchery operations and harvest limitations without breaching four dams on the lower Snake River, angered environmental groups that sued in May 2001. While environmentalists argue that the government has a duty to ensure its actions will not put endangered stocks in jeopardy, Department of Justice officials maintain that they are only responsible for not diminishing the likelihood of recovery from a threatened species listing. The ruling marked the second time in a decade that courts have rejected far-reaching federal attempts to balance the survival of endangered salmon against the economic demands of America's largest federally built hydroelectric system.

Appeals Court hears arguments in Coho salmon case. The Ninth Circuit Court of Appeals listened to arguments last week about whether hatchery-born salmon should be counted along with stream-bred salmon when it comes to determining whether coho are endangered and in need of special protection under the ESA. On appeal is the landmark *Alsea Valley Alliance v. Daley* decision issued in 2001, which found that the National Marine Fisheries Service (NMFS) illegally distinguished between the hatchery-spawned salmon and so-called “wild” salmon, thus violating the Act. No date has been set for a ruling in the case.

Judge upholds plover habitat pending further study. Most of the 210 miles of West Coast beaches designated as critical habitat for the threatened *snowy plover* will remain off limits while the Fish and Wildlife Service (FWS) does a new economic impact study, a federal judge ruled last week. The ruling is the latest development in the struggle over plover habitat, following a lawsuit filed last year claiming the federal designation of snowy plover areas was based on faulty science and did not take into account the economic impact. FWS acknowledged its economic analysis was “flawed” and filed a voluntary motion asking that the designated areas stay in place while the agency re-examines its study on the economic impacts. The new study will be completed by September of 2005.

FWS to conduct review of the *northern spotted owl* and *marbled murrelet*. FWS announced recently that it is conducting a five-year review of two threatened birds, the *northern spotted owl* and the *marbled murrelet*. The review, as required for all listed species under the ESA, will assess how the birds have fared since they were listed for protection in the early 1990's. It will consider information that has become available since the original listing determination, such as population and demographic trend data; studies of dispersal and habitat use; genetics and species competition investigations; surveys of habitat amount, quality, and distribution; adequacy of existing regulatory mechanisms; and management and conservation planning information. The Service is soliciting information from all sources. Comments must be received by June 20, 2003.

FWS to allow water releases. The Army Corps of Engineers will be able to release enough water into the Missouri River to support barge traffic and flood a “limited number” of nests of endangered birds in the process under a one-year agreement recently reached by river managers and federal officials. FWS said in 2000 that the Corps must operate its dams on the Missouri to mimic natural conditions or risk the extinction of the *piping plover*, *interior least tern* and *pallid sturgeon*. In its 2000 biological opinion, FWS said higher water levels in the spring and lower summer flows are needed to provide the species with conditions necessary for reproduction. The agency had demanded changes by this spring, but last month conceded the birds' long-term recovery could take a “one time hit” this summer from water releases. The releases will allow barge traffic to continue despite drought conditions.