

National Endangered Species Act Reform Coalition

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U P D A T E

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

House Resources Committee turns to ESA reform. With work on the President's Healthy Forests Initiative and comprehensive energy legislation behind them, the House Resources Committee is now turning to another of the committee's top priorities, ESA reform legislation. Representatives of various organizations that support ESA reform, including NESARC, recently met with committee staff for the first of what hopefully will become periodic meetings of those dedicated to moving an ESA reform bill this year. In addition to discussing potential substantive areas for ESA reform and a proposed timetable for committee consideration of legislation, the participants addressed the need to implement an effective communications strategy and continue building the coalition of groups that will work together on this important issue. NESARC members and staff also continue to meet with members of the committee and their staff to advocate the introduction and enactment of various ESA reform bills.

FWS out of money for critical habitat. Late last month, Department of the Interior Assistant Secretary Craig Manson referred to the Endangered Species Act as "broken," and called for changes to the ESA to allow the Fish and Wildlife Service (FWS) to determine the needs for critical habitat without the delays and heavy costs incurred as a result of litigation. Manson stated that, on its current course, FWS will exhaust by July the funds required to meet its obligations to designate critical habitat under court orders and settlements for FY 2003.

The Administration has requested authority from Congress to shift money from other endangered species programs to cover the shortfall. These include programs to work with landowners on conservation projects to keep imperiled species from being listed under the Act, consultation with other federal agencies to protect species, and recovery work for species already threatened or endangered. DOI also announced that FWS needs an additional \$2 million this year to comply with court-ordered deadlines to designate critical habitat for 32 species, deadlines generated by ESA lawsuits from environmental groups. The ESA requires that critical habitat be designated when a species is determined to be at risk. However, lack of information and resources often delay the process. Nearly two-thirds of the \$9 million budgeted in 2003 for species protection was earmarked to comply with court orders and settlements.

FWS will also soon begin adding a disclaimer to every critical habitat designation published in the *Federal Register* stating that, while the Service is complying with ESA in designating critical habitat, the measure is driven by litigation rather than biology, and provides little additional protection to the species. Manson acknowledged that protecting habitat is important for species, but argued that critical habitat designation as it currently exists leads to many other negative consequences. He suggested that one way to address the problem would be to require the designation of critical habitat at the same time as the recovery plan is developed rather than at the time a species is listed. This would allow for an additional two years to assess lands for habitat designation, providing an opportunity for the FWS to gather additional data about the species and the land most appropriate for its recovery.

Congress hands DOD partial win in authorization bill. The Administration had mixed success in achieving its requested changes to environmental laws recently as the House and Senate approved their Defense authorization bills. The Senate's S. 1050, which passed 98-1, satisfies the Pentagon's request to alter the ESA to remove the requirement to designate critical habitat designations on military lands that already have an Integrated Natural Resource Management Plan (INRMP) required by the Sikes Act. But, through an amendment offered by Sen. Frank

Lautenberg (D-NJ), the Interior Secretary must first determine, in writing, that the INRMP would effectively conserve the threatened and endangered species within the lands or areas it covers and adequate funds will be available for the management activities. The House's H.R. 1588, which cleared the chamber 361-68, includes the ESA change without the additional criteria included in the Senate bill. Additionally, language that was agreed to by the House Armed Services Committee that would have modified the critical habitat designation criteria for all ESA decisions was removed during floor debate. A more detailed NESARC Legislative Alert on these actions may be found at <http://www.nesarc.org/esaupdate053003.pdf>

Administration exempts small projects, proposes limits on ESA consultations. The Administration recently announced a series of new measures designed to streamline the approval process for certain logging projects. The changes, published earlier this month in the Federal Register, will allow the Forest Service to approve logging projects of up to 1,000 acres and undertake fire recovery projects in burned areas of 4,200 acres or less without conducting environmental reviews. While Section 7 of the ESA currently requires the Forest Service to consult with the FWS or the National Marine Fisheries Service (NMFS) to determine whether a logging project would impact a listed species, the proposal establishes an alternative process designed to speed up the approval of logging projects. Supporters say the moves are necessary to avoid lengthy delays, but environmentalists criticized the changes as being a rollback of environmental protections. The Federal Register notice may be found at <http://a257.g.akamaitech.net/7/257/2422/14mar20010800/edocket.access.gpo.gov/2003/03-13927.htm>

Review of listings could open more areas to logging. The Administration has agreed to a review of federal protection for the *northern spotted owl* and *marbled murrelet*, both of which stand in the way of increased timber harvests in the Pacific Northwest. FWS listed the owl in 1990 and murrelet in 1992 as threatened under the ESA, establishing critical habitat for both species within a broad range of the region's mature forests. A failure to perform a five-year review of the listing decisions prompted two industry groups to sue FWS last year, leading to a settlement calling for an administrative review of the listing decisions. Among other things, the settlement requires the government to reassess critical habitat designations for both birds, factoring in not only the economic impact of critical habitat, but also the cumulative economic consequences of listing the species in the first place. The review is scheduled to be completed by the end of the year.

STATE UPDATES

WA environmentalists reach settlement over state hatcheries. Washington State officials settled lawsuits recently filed by Washington Trout and the Native Fish Society, ending a challenge of the operation of state salmon hatcheries. Washington Trout began its court proceedings in March, alleging ESA violations at up to 18 Washington Department of Fish and Wildlife coho salmon and steelhead trout hatcheries. The environmental groups agreed to end their lawsuits in exchange for more chances for public comment on the hatchery management plans.

FWS rewards CA farmers for protecting kit fox. Nut farmers in California's Central Valley received a "safe-harbor" designation last month from FWS for their efforts to protect the endangered *San Joaquin kit fox* from coyotes on their property. Owners of one farming company built 25 escape dens on their land after being approached by the Endangered Species Recovery Program in 1999. As a result, a voluntary agreement was reached with FWS that protects the company from liability under the ESA.

Florida defers decision to reduce manatee protection. Florida officials recently delayed a ruling on whether to decrease protection for the Florida manatee. At issue is whether the protection status for the manatee should be downgraded from "endangered" under Florida law to "threatened." State officials said they would like more time to review scientific evidence before making a decision. In a vote, officials decided to allow their staff more time to study the issue and make a final decision on downlisting no later than November of this year. The manatee is listed as endangered on the federal list of endangered and threatened species.