

**MWD**

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

May 18, 1993

To: Board of Directors (Executive Committee--Information)
 (Special Committee on Legislation--Information)
 (Water Problems Committee--Information)
From: General Manager
Subject: Update on the Reauthorization of the Federal
 Endangered Species Act

Report

Past Action. Your Board has been advised by letters of February 12, 1992 and January 8, 1993 (attached) of concerns relating to reauthorization of the federal Endangered Species Act. In January 1992, staff was authorized to pursue legislative language that would amend the Act to provide the Secretary of Interior or Commerce (Secretary) the flexibility to approve conservation plans for multiple species in advance of listing and to commit to issue an incidental take permit upon any subsequent listing of those species. Two of the bills discussed below (Baucus and Studds) contain the provision that Metropolitan sought last year.

Legislation. This year, four bills have been introduced to reauthorize the federal Endangered Species Act. These are S.921 introduced by Chairman Baucus of the Senate Environment and Public Works Committee, H.R. 2043 introduced by Chairman Studds of the House Merchant Marine and Fisheries Committee, H.R. 1490 introduced by Mr. Tauzin, and H.R. 1992 introduced by Mr. Smith of Oregon. The Baucus and Studds bills are thought to be the two prime bills; copies of the four bills are attached. The main points of these bills are summarized below.

S. 921 Baucus bill. Provides for conservation plans for candidate or proposed species and for issuance of 10(a) incidental take permits upon listing;

Provides for listing priorities for species that could benefit other species within the ecosystem;

Provides additional emphasis for de-listing of species;

Requires scientific peer review from at least three independent qualified scientists regarding a proposed listing;

Provides for multi-species recovery plans for endangered, threatened or candidate species;

Requires any critical habitat designation to incorporate relevant information from the recovery plan development;

Creates a fund and provides for financial assistance for development of habitat conservation plans;

Provides for solicitation of input regarding status of species from the State agency; and

Specifies that Federal actions abroad or with effects abroad are subject to the Act.

H.R. 2043 Studds bill. Includes points from the Baucus bill except for extension of Act to areas abroad; and

Provides that each recovery plan include an identification of specific areas or circumstances that would help reduce conflicts between species conservation and economic activity.

H.R. 1490 Tauzin bill. Requires peer review of proposed listings;

Gives greater weight to economic considerations in designating critical habitat;

Requires Secretary to minimize socioeconomic costs when developing reasonable and prudent alternatives to proposed actions that would jeopardize a species;

Gives priority to recovery plans that address multiple species, geographic areas with conflicts between conservation of species and economic activities, and minimization of socioeconomic costs;

Revises definition of "take" to apply harassment and harm only to efforts to injure;

Exempts recovery plans and cooperative management agreements from "take" provisions;

Provides for issuance of general permits for activities causing only minimal adverse effects on species;

Provides for multi-species conservation plans, but needs clarification that take permit would be issued upon listing of covered species;

Provides for cooperative management agreement for listed, proposed, or candidate species; and

Provides for compensation for adversely affected landowners.

H.R. 1992 Smith bill. Sets out new criteria for listing species which include economic and other costs and benefits of the listing and the technical practicability of recovering the species;

Requires peer review of the proposed listing by panel of experts selected by the Inspector General;

Restricts listing advisors from receiving funding to conduct studies on a species following its listing;

Restricts emergency listing to species with an immediate threat of extinction; and

Limits application of take prohibition until recovery plan is completed.

Possible Improvements to the Baucus/Studds Bills.

In many cases, Metropolitan has had positive experience working with the provisions of the existing Endangered Species Act. However, this experience has highlighted areas within the Act that could be improved to allow for greater capability for satisfactory resolution of endangered species issues on the part of both Metropolitan and the Fish and Wildlife Service or National Marine Fisheries Service. The following are issues that Metropolitan should pursue:

1. The Baucus and Studds bills address multi-species planning by referring to species proposed for listing and candidates identified by the Secretary. It may be desirable to expand this capability to cover other recognized sensitive species that may not yet have status. This could be accomplished by modifying the bills' proposed amendment of section 13 of the Act as follows:

"(A) Any State, county, municipality, political subdivision of a State, or other person may develop a plan for the conservation of any species which is identified by the Secretary to have potential for listing under section 4.
~~has-been-proposed-for-listing-or-identified-by-the Secretary-as-a-candidate-for-listing-under-section-4.~~"

2. The Baucus and Studds bills discuss the above plan with respect to conservation of sufficient lands for the covered species. It is recommended that aquatic environments be specifically mentioned in section 13 as follows:

"(B) A plan developed under ~~this~~ subparagraph (A) shall ~~cover-an-area~~ affect land or water resources that, alone or when considered in association with ~~nearby~~ other lands or water resources dedicated to conservation, is sufficiently large in size to encompass adequate suitable habitat within which the covered species can be maintained over the long-term."

3. The Baucus and Studds bills specifically provide language that would require the Secretary to issue incidental take permits for candidate or proposed species covered by an approved conservation plan. Upon any subsequent listing of the species, the Secretary would be required to verify that the terms of the permit have been implemented. This language is essential to providing solid legal standing for advance conservation agreements and warrants strong support by Metropolitan. The subject language in section 13 is as follows:

"(2) Permit Issuance.--If a plan developed pursuant to paragraph (1) specifies the information required under section 10(a)(2)(A), and if after opportunity for public comment on the plan the Secretary makes the findings required under section 10(a)(2)(B), the Secretary shall, upon receipt of such assurances as the Secretary may require that the plan will be implemented, issue a permit under this paragraph. Such a permit shall be treated, upon the listing under section 4 of any species for which the plan was developed, as a permit issued for that species under section 10(a)(1)(B)."

4. The Studds and Baucus bill amendments to section 3 of the Act address listing and delisting improvements. Included in the discussion is a provision for coordination of critical habitat designations and recovery plans. The bill language states,

"(D) If the Secretary, under subparagraph (C), extends the one-year period, any final regulation designating critical habitat shall incorporate relevant information gathered during the development of the appropriate recovery plan under section 5."

Because recovery plans are concurrently under preparation with the proposed designation of critical habitat for endangered fish species in the Colorado River Basin, staff proposes to pursue clarification of the relationship of these two parallel, but related, processes.

5. The existing Act provides that species be listed solely on the basis of the best scientific and commercial information regarding the potential for extinction. The Act also provides for consideration of economic impacts of critical habitat designation, but requires the Secretary to designate areas that are necessary to prevent the extinction of species. Currently, the Fish and Wildlife Service conducts a limited economic evaluation of its critical habitat proposals and does not actively seek input in advance from potentially affected parties. Staff proposes that the Secretary be specifically required to better incorporate economic considerations in developing reasonable and prudent alternatives under section 7 of the Act. Further, staff proposes to seek language that would require solicitation of input by the Secretary in advance regarding economic effects of critical habitat designations and to incorporate such economic input into development of practical recovery plans. Clearly, biological information must take precedence in the listing of species and the designation of critical habitat. However, beyond this, there needs to be a more inclusive role for economic considerations. These proposals seek to accomplish this without weakening the protection of species and habitat provided by the Act.

Staff will continue to update your Board regarding Endangered Species Act reauthorization activities.

Board Committee Assignments

This letter is referred for information to:

The Executive Committee because of its jurisdiction over legislation sponsored by the District or in any way affecting the District, pursuant to Administrative Code Section 2417, subdivision (a); and

The Special Committee on Legislation because of its jurisdiction to review and make recommendations based upon presentations of the General Manager regarding proposals to Administrative Code Section 2581, subdivision (a).

The Water Problems Committee because of its authority to study, advise, and make recommendations with regard to policies, sources, and means of importing water required by the District.

Recommendation

For information only.

KMK/dgs

s:Board/19

Attachments


General Manager

REAUTHORIZATION OF THE FEDERAL ENDANGERED SPECIES ACT
COMPARISON OF LEGISLATION ON KEY ISSUES

Metropolitan's Interests/Concerns	Possible Improvements to Baucus/Studds Legislation	Baucus S 921	Studds HR 2043	Tauzin HR 1490	Smith HR 1992
1. Authority for Secretary to enter into multi-species conservation plans in advance of listing of species.	Expand authority to cover other sensitive species. Clarify conservation plan language to address land or water resources.	Provides for development of conservation plan for candidate and proposed species.	Same as Baucus.	Provides for multi-species conservation plans for candidate, proposed, threatened, or endangered species and any other species associated with such.	Does not address.
2. Guarantee that an advance conservation plan will receive a take permit upon listing of any covered species.	Metropolitan should provide strong support for this provision.	Requires issuance of take permit upon approval of conservation plan. Upon listing of a covered species, the Secretary is required to verify that the conservation plan is being implemented.	Same as Baucus.	Provides that the Secretary <u>may</u> issue a take permit for a multi-species conservation plan.	Not applicable.
3. Scientific peer review of Secretary proposals.		Upon request, provides for three independent referees qualified through publication of scientific literature to address endangered species determinations.	Same as Baucus.	Upon request, provides for peer review by 3 individuals recommended by the National Academy of Sciences to address proposals to list species and designation or revision of critical habitat.	Requires Secretary to submit proposals for species listing to Inspector General for implementation of peer review without input from Secretary. Panel of experts shall have no financial connection to Secretary. Further, no person who advises Secretary regarding proposal shall receive any funding from Secretary subsequent to adoption of the proposal.
4. Improved inclusion of economics into critical habitat and recovery plans.	Seek better incorporation of economic considerations into development of reasonable and prudent alternatives pursuant to Section 7. Seek language to require advance solicitation of input regarding economic effects of critical habitat designations. Require economic input be incorporated into development of recovery plans.	Requires Secretary to "seek to minimize adverse social and economic consequences ... of recovery plans."	In addition to Baucus provision provides that recovery plans identify specific areas or circumstances to reduce conflicts between species conservation and economic activity.	<u>Critical Habitat:</u> Requires exclusion of areas with economic impacts unless results in extinction of species. Requires proposed regulation to discuss economic impacts and for Bureau of Labor Statistics to comment. <u>Jeopardy Opinions:</u> Requires Secretary to identify reasonable and prudent alternatives to a proposed project "that impose the least socioeconomic costs." <u>Recovery Plans:</u> Requires socioeconomic assessment addressing employment and property use and value.	Requires inclusion of economic considerations into the listing of species. Provides for compensation for lost value of private property.

REAUTHORIZATION OF THE FEDERAL ENDANGERED SPECIES ACT
COMPARISON OF LEGISLATION ON KEY ISSUES

Metropolitan's Interests/Concerns	Possible Improvements to Baucus/Studds Legislation	Baucus S 921	Studds HR 2043	Tauzin HR 1490	Smith HR 1992
5. Provision for multi-species recovery plans.		Gives priority to multi-species recovery plans for threatened endangered or candidate species.	Same as Baucus.	Provides for integrated recovery plan for 2 or more endangered or threatened species.	Does not address.
6. Consultation on Federal actions abroad.		Specifies that Section 7 applies to extraterritorial actions and actions with territorial effects.	Does not extend the Act.	Does not extend the Act.	Does not extend the Act.
7. Coordination of critical habitat designation with recovery plan development.	Seek clarification of the relationship between critical habitat and recovery plans.	Requires critical habitat designation to incorporate relevant information from recovery plan development.	Same as Baucus.	Does not address.	Does not address.