



Society for Conservation Biology
POLICY INSIDER 12-09

The Policy Insider is a newsletter of SCB policy work, the impetus for the work, and opportunities for you to participate in supporting that work. The Policy Insider also features the current activities of other organizations with which SCB collaborates.

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Climate

New Forest Findings Change the Equation – SCB Recommends Policy Principles for Copenhagen and Washington

In the months leading up to the Copenhagen climate conference, SCB assembled a set of climate principles that covered nearly every element of the debate from the greenhouse gas targets to our rapidly evolving understanding of the pivotal role that forests and ecosystems will play – as victor or victim – in the fight against uncontrolled climate change.

On November 25th, SCB delivered a letter from Society President Luigi Boitani to the Prime Minister of Denmark, the Chairwoman of the Copenhagen Conference, and the Royal Danish Embassy in Washington. The letter was accompanied by our suite of 11 policy principles on climate change.

These 11 principles were inspired by dialog among SCB global leaders during our 2009 International Congress for Conservation Biology (ICCB) climate-related workshops in Beijing, China. The policy principles were propelled by new findings summarized in 2009 editions of SCB's *Conservation* magazine and journal *Conservation Biology*.

The basic message is this: we now have evidence that whole rainforests can—and in 2005, the Amazon did—die faster than they grow, in response to climate driven drought and heat. In this case, the result was higher net 2005 emissions of carbon dioxide than the CO₂ emitted by all of Europe and Japan annually. Since life as we know it relies upon forests, and, in particular on the health of massive rain forests like the Amazon, this new research suggests that we do not have any significant room left for additional greenhouse gases (GHGs). We must reduce GHG now. Our 11 climate policy principles offer ways forward and cite studies offering further details as well.

These principles and several pages of endnotes are intended for climate negotiators, legislators, and executive agency decision-makers. Before the document's release, and before the Senate Environment Committee reported its legislation to the Senate, SCB sent early drafts to Senate Environment Committee staff. SCB staff and senior members briefed the Congressional Research Service, the staff of the Speaker of the House, the White House Council on Environmental Quality, and others. We also shared the document with senior staff of the United Nations Environment Programme under whose auspices the climate negotiations take place.

Ed Grumbine, college professor and well-known author, is an SCB member who over the past decade has become an expert in China's response to climate change. Ed helped us in the final editing of the principles and came to Washington to help with the final briefings. These meetings led, after more research by *Washington Post* reporter Juliet Eilperin, to a story on December 3rd breaking the news to the wider public that rainforests are reaching a tipping point of their own, thus changing the entire climate equation.

Our 11 principles note many studies that show in detail how we can transition to a cleaner and safer world for wildlife and humans alike. To date, policy makers have been slow respond to the news.

The outlines of two new bills were announced by Senators Kerry and Cantwell on December 10th and 11th, joining the “Boxer bill” authored primarily by Environment Committee Chairwoman Boxer and reported by the Committee for consideration later by the full Senate. Now, these three main climate bills await further action in the US Senate, in addition to measures that address many related elements, such as an energy bill reported by the Committee on Energy and Natural Resources. They are Cantwell’s “Carbon Limits and Energy for America’s Renewal (CLEAR) Act, the Boxer bill, S.1733, and the announced but not yet introduced Kerry-Lieberman bill. We suggest you follow these measures by reviewing them on the websites of their main sponsors at www.senate.gov, and by considering analyses being posted by SCB and others, such as the organizations and offices listed on our tools and resources page – <http://www.conbio.org/activities/policy/advocacy.cfm>.

Please share our principles document and discuss these issues with your senators, Members of Congress, and their personal and committee staff members and let us know about your conversations or other communications.

- Read the climate policy principles here
- Press release for the climate policy principles
- Read the cover letter to Prime Minister of Denmark as he prepares to convene the Fifteenth Conference of the Parties to the United Nations Framework Convention on Climate Change
- Juliet Eilperin’s story in the Washington Post

To help with our Climate Change Task Force, or another issue task force, please email taskforce@conbio.org

**More Tools In The Toolbox:
The Obama Administration Has More At Hand In The Clean Air Act
Than Obama Might Realize**

By Lyn Arnold and John Fitzgerald

In early 2007, the SCB Board of Governors chose climate change as the top policy priority of its five global priority issues. One of the most important issues for policy makers and their constituents to understand as we decide how to solve the climate change problem by reducing our greenhouse gas (GHG) emissions is the extent to which the Executive Branches of the World, and in the U.S., starting with the Environmental Protection Agency (EPA) are suitably armed with existing authorities and how much new law Congress or other legislators, and climate negotiators should enact in new statutory or treaty requirements. On the global level, existing climate commitments and other conservation treaties, such as those that help preserve forests and ecosystems, can help us address climate change while we develop the next core climate agreement and as we implement it, if they are not preempted by the new agreement.

The U.S. EPA and the Administration have indicated they would prefer new statutory powers targeted specifically to GHG emission regulation. However, passing new legislation has become a daunting task involving trade-offs that threaten to jeopardize the potential effectiveness of the laws President Obama and his appointees already have at their disposal.

Many commentators have declared that Obama's hands are tied at home and abroad until the Senate has more than 60 votes in favor of climate legislation – 60 votes are required to overcome a filibuster, or tactical delay. Nothing could be further from the truth.

In this article, we focus on the Clean Air Act (CAA). We told President Obama's transition team one year ago, there are several other domestic and international laws, like the CAA, that can be very powerful tools to reduce climate change and its effects. We urged the President to direct Federal agencies to present an interagency plan for using these existing authorities. Such a plan would show Congress the gaps they need to fill. (See Section 3 of "SCB Recommendations for actions by the Obama Administration and the Congress to advance the scientific foundation for conserving biological diversity." www.conbio.org/resources/policy.)

On October 5th, following the third climate policy suggestion we made in December of 2008, President Obama issued a very helpful executive order (a statement and the order can be read [here](#)) directing all agencies to take steps to address climate change and their own energy use, as we suggested. But so far, Federal agencies have not laid out a broad plan for addressing climate change.

The EPA recently took a major step forward, however, in issuing a finding that carbon dioxide—and presumably eventually all the other greenhouse forcing agents from methane to black soot—are endangering the public health by changing the climate. Although this "endangerment finding" requires that the EPA follow it up in a reasonable amount of time to adopt regulations to address this clear and present danger, it does not determine exactly what EPA must do or when. EPA has slowly begun to take those steps while Congress moves forward on climate change, energy, and public lands legislation to address different parts of the problem.

The Political Dynamics Behind the Scenes

The key dynamic in all of this is the struggle by various industries to use the moment to their advantage. Some will push to slow down (and others to speed up) what almost everyone understands is a transition that must be made to cleaner economies that sustain natural resources. For example, the fossil fuel industries are trying to use the crisis to protect themselves from incurring costs and liabilities or experiencing reduced profits. The nuclear power industry is trying to increase its already large subsidies, portraying itself as a clean option, when much less expensive and less risky electric generating and efficiency technologies are more readily available. Power plants driven by coal or nuclear energy are not only environmentally unfriendly, but may be unnecessary. The Chairman of the Federal Energy Regulatory Commission said this spring, in essence, that the US probably does not need to build any more coal or nuclear power plants at all, but could use a mixture of electric energy generated by cleaner natural gas and renewables for any new electric power production.¹

¹ <http://www.nytimes.com/gwire/2009/04/22/22greenwire-no-need-to-build-new-us-coal-or-nuclear-plants-10630.html>

Unfortunately, “power plays” by the major power industries to exploit this transitional time were incorporated into the climate bill passed by the House, H.R. 2454, (the American Clean Energy and Security Act (ACES) or the “Waxman-Markey bill”- see May-June edition of Policy Insider for details²). The bill calls for suspension or waiving of several provisions of the Clean Air Act (CAA). Waiving or suspending these provisions effectively slows the pollution reductions to a given pace,, which, in this case, would be the schedule contained in the House-passed bill. The compromise reductions, according to climate and forest experts, will not achieve the Intergovernmental Panel on Climate Change (IPCC) recommended reductions set in 2006. Furthermore, the IPCC recommendations, in turn, have now been surpassed by new recommendations based on recent evidence of greater than expected climate changes. In other words, the House-passed bill might actually prevent more progress than we could otherwise achieve through aggressive application of existing law.

Three important Senate bills, again, are currently being considered. First, the Senate Environment Committee has reported a major bill (S.1733 - Clean Energy Jobs and American Power Act, or the “Boxer” or “Boxer-Kerry” bill). S. 1733³ delays the regulation of methane for several years but otherwise retains most Clean Air Act powers. Senators Kerry, Lieberman, and Graham on December 10th sent a brief outline of another proposed bill to the President that includes more nuclear and domestic oil production. Read the outline here. On December 11th, Senators Cantwell and Snow released their much simpler, 40 page bill to create a cap, tax, and dividend bill that by-passes the trading of carbon credits. None of the three approach the level or speed of reductions in GHGs or restoration of forests, grasslands, and shorelines in the US or abroad that the current science indicates is necessary. The Cantwell bill appears not to waive or weaken any existing law (which the others would do) but seems to address only carbon and not the other greenhouse gases, agents like black soot or their CO2 equivalents. Presumably, she would leave that to the EPA under current law. The Cantwell bill can be read here.

The Congress overall has passed only one measure recently that blocks the Clean Air Act. That is the Interior-EPA Appropriations bill that Obama signed into law on October 30th. That appropriations bill contains two sections that block mandatory gas reporting and any permit system for livestock-generated GHGs - essentially, “manure management”- to avoid the release of methane which is a potent greenhouse gas. The Congress has recently voted down several attempts to block the rest of the CAA’s application to climate change.

Obama’s Choice

Obama’s best choice then may be to

- 1) Realize and declare the existing powers at his disposal;
- 2) Tell Congress what he needs and what he will accept; and
- 3) Announce what he will veto if Congress goes too far in taking away the power of Federal agencies to respond appropriately to scientific findings and technological advances.

Under current law, Federal agencies, led by the EPA, must respond to scientific findings in an open administrative rule-making petition or other rulemaking process. Those petitions or agency-led rulemakings address the harm done and the means of avoiding that harm through the use of the Clean Air Act and other environmental laws.

² <http://www.opencongress.org/bill/111-h2454/show>

³ <http://www.opencongress.org/bill/111-s1733/show>

For example, a Supreme Court victory for Massachusetts⁴ and its co-plaintiffs ended a stand-off between several state attorneys general and their conservation allies and the Bush Administration in 2006. The Court required EPA to move on addressing carbon dioxide through agency findings and rulemakings. CO₂ acts as the leading greenhouse gas pollutant when it exceeds levels in the atmosphere of anywhere from 270 to 350 parts per million, according to our nation's leading climate scientists. (See, "Target" by Jim Hansen, et al., cited in the SCB statement on climate policy principles, at www.conbio.org/resources/policy.) The question for EPA was whether the current or future levels endanger public health and what to do about it.

What the EPA Can Do Now, Without Waiting for Congress

The Obama Administration has many tools at hand to start addressing GHG immediately⁵. For example, provisions of the Clean Air Act regarding control technologies could open the door for better use of alternative energy if the Administration were to establish a broader definition of some of the basic requirements of the Act, such as the requirement that new or modified sources use the "Best Available (air pollution) Control Technology" or "BACT".

Traditional interpretation of control technologies centered on discreet mechanisms or structures, such as scrubbing systems, taller stacks, and flue gas desulfurization (FGD) devices. However, BACT is defined in the law as any combination of technologies—an emission limitation production process, method, system, or technique—that can control a particular pollutant, or a combination of these technologies. In fact, as noted above, the chairman of the Federal Energy Regulatory Commission said this spring, in essence, that the US probably does not need to build any more coal or nuclear power plants at all, but could use combinations of cleaner natural gas and renewables for any new electric power production.⁶

For example, increasingly nimble software and hardware applications network power sources, delivering various forms of energy savings, such as briefly reduced power, and power from cleaner sources, to users and communities. The networked system draws power from more than one facility, i.e., wind farms and solar arrays or geothermal and natural gas. Therefore, by drawing on a variety of clean energy sources, we can reduce our need for energy derived from fossil fuel sources.

⁴ *Massachusetts v. Environmental Protection Agency*, 549 U.S. 497 (2007). This case can be found at http://www.oyez.org/cases/2000-2009/2006/2006_05_1120/

⁵ This article addresses a few of the most promising elements but does not address several other opportunities available under the Act, such as the question of whether National Ambient Air Quality Standards (NAAQS) for greenhouse gases such as CO₂ should be established. Our health depends reducing not only our own emissions but those of others. Nevertheless, such a standard could recognize the fact that the greenhouse effect will be hazardous for all until GHGs are reduced. In fact, the CAA itself asks the Secretary of State to notify the EPA of new international studies that may warrant action by the EPA, such as the IPCC reports and more recent summaries by the United Nations Environment Programme. The question is what the best combination of tools are for responding to these local and global hazards, using both the CAA and other laws, both old and new.

⁶ <http://www.nytimes.com/gwire/2009/04/22/22greenwire-no-need-to-build-new-us-coal-or-nuclear-plants-10630.html>

BACT for a renovated coal plant could include a wind farm, or solar array and a small gas turbine, that feeds into the same electric grid or system balancing area. While coal and nuclear plants are not as easily adjusted in their outputs as gas turbines are, they usually have some flexibility and can also be paired with gas and other technologies. Wind-produced electricity is balanced as it feeds into the grid through an interface that allows for more efficient production of electricity – more from the farm, less from the coal and gas plants. The windfarm acts as a pollution control technology, lessening the output of pollutants by the coal and gas plants by supplying pollution-free electricity. The BACT is determined on a case by case basis and may in many cases simply be a combination of cleaner generators that does not include coal or nuclear power plants.⁷

Beyond “Best Available Control Technology”

Additional tools within the CAA are Sections 7408, 7411, as well as the definition of “source” and the bubble concept.

Section 7408: At the same time an air quality criteria for a pollutant is set, the EPA issues information to the States on air pollution control techniques.⁸ The data must include all available information on available technologies **and alternative methods** of prevention and control of air pollution.⁹ The information must include **data on alternative processes, operating methods**, and fuels that will result in elimination or significant reduction of emissions.¹⁰

Here again the language of the provision goes beyond the concrete to alternative methods and processes.

Section 7411: This section allows EPA to “promulgate a design, equipment, work practice, or operational standard, **or combination thereof**, which reflects the best technological system of continuous emissions reduction which the Administrator determines has been adequately demonstrated.”¹¹ This is a very flexible provision. It further provides that if anyone can establish that an alternative means will achieve a reduction in emissions, the Administrator will permit the use of the alternative for purposes of compliance.¹² 7411(h) provides an opportunity for development of a comprehensive system that incorporates many varied facets of control, and to have that system approved for purposes of compliance.

Further, Section 7411(j) enables the EPA to force industry to develop new technologies, even when operational difficulties exist with promising but less familiar technologies.¹³ EPA can stimulate

⁷ It is also important, of course, to ensure that renewable technologies are chosen to meet the needs of different areas, and sited and managed to minimize harm to wildlife.

⁸ 42 U.S.C. § 7408(b)(1).

⁹ 42 U.S.C. § 7408(b)(1), emphasis added.

¹⁰ *Id.*

¹¹ 42 U.S.C. § 7411(h)(1), emphasis added.

¹² 42 U.S.C. § 7411(h)(3).

¹³ Larry Parker, James E. McCarthy, *Climate Change: Potential Regulation of Stationary Greenhouse Gas Sources Under the Clean Air Act*, CRS Report R40585 at 19.

development of clean technologies by permitting the use of a promising new technology that needs application in the field to prove itself.¹⁴

The definition of “source”: In a final formal rulemaking proposal regarding a plant-wide definition of the term “source”, EPA proposed what we now call the “bubble concept”, to be used in a limited way under certain situations.

The bubble concept generally allows factories, refineries, and other sources of air pollution to treat all stacks and vents at a certain facility as though they are enclosed by a giant bubble. When considered a single source, a facility gains more pollution control on stacks that are easy to control in exchange for reduced controls on those that are expensive to control, so long as overall emissions are reduced by the same amount. Significantly, the EPA expressly noted that the word “source” might be given a plant-wide definition for some purposes and a narrower definition for other purposes.

Legally, the EPA could expand its interpretation of the bubble concept to include off-site alternative energy systems as new control technologies to work in tandem with (or instead of) older major emitting facilities.¹⁵ The Best Available Control Technology is to be determined on a case by case basis depending on what is actually available in the area to be served, but EPA could issue guidelines to States on the subject.

The Congressional Research Service (See footnote 9) has discussed several of these options, including regulating GHGs as hazardous air pollutants, which requires using what is called the “Maximum Achievable Control Technology (MACT) *for major existing* and new sources. This approach might begin with a potent GHG like sulfur hexafluoride but then move to take on more of the several greenhouse gases.

The Secretary of State or the EPA Can Trigger International Endangerment Findings Based on International Reports on Emissions: There is Existing Authority to Protect Nations That Reciprocate. Under Section 115 of the CAA, the Secretary of State can find an endangerment emanating from a source or sources in the U.S. but endangering another country or simply call on the EPA to act based on international reports (such as the Intergovernmental Panel on Climate Change and a new report from the United Nations Environmental Programme, which can be found [here](#)) and call on the EPA to act. This arrangement, however, is available only to countries that have concluded an agreement that provides reciprocal rights to the U.S. While certainly relevant to GHGs, this option has

¹⁴ Although studies have shown that “technology-push” instruments appear less effective than invention borne of “demand-pull” instruments, that does not mean that the trend will stay that way. Parker and McCarthy at 18, citing Margaret R. Taylor, Edward S. Rubin, and David A. Hounshell, “Control of SO₂ Emissions from Power Plants: A Case of Induced Technological Innovation in the U.S.,” *Technological Forecasting & Social Change* (July 2005), p. 697.

¹⁵ In *Natural Resources Defense Council v. Chevron*, 467 U.S. 837 (1984), the Court recognized that the listing of overlapping, illustrative terms was intended to broaden, rather than to narrow, the scope of the EPA’s power to regulate particular sources. The Court further held that “an agency, to engage in informed rulemaking, must consider varying interpretations and the wisdom of its policy on a continuing basis.” In short, the Court held that EPA’s decision to allow States to treat all of the pollution-emitting devices within the same industrial grouping as though they were encased within a single “bubble” is based on a reasonable construction of the statutory term “stationary source.”

not been used and no major conservation or other groups have yet chosen to press it according to the CRS. The language of the statute does not use the term treaty or protocol. Combined with the holding of the Court in Chevron providing for flexible applications of the Act, this would seem to authorize the Obama Administration to enter into and enforce Executive Agreements with other countries for reciprocal cooperation in reducing climate forcing pollutants the strength of which is comparable to that of our Clean Air Act, without the Senate having to ratify any treaty or protocol. All nations already have a general duty not to harm the environment of any other nation under customary law and, for most nations, Article 3 of the Convention on Biological Diversity. Thus, depending on their systems, their executive branch officials may already have the authority to enter into reciprocal agreements giving effect to this principle in the context of biodiversity and ecosystem conservation. The US and Canada established this principle with regard to the international effects of air pollution in the Trail Smelter arbitration in the late 1940s and the U.S. agreed to restate it in hard law in the negotiation of the CBD in May of 1992.¹⁶

GHGs as Designated Air Pollutants: The EPA can regulate GHG as designated air pollutants (using Section 111), which establishes New Source Performance Standards. This is the route currently chosen by EPA. Under this Section, EPA sets performance standards, and in September proposed increasing the permitting threshold for stationary sources to 25,000 tons of carbon or carbon equivalent per year (up from 250 currently set by the CAA).

These are just some of the examples of the flexibility of the CAA and how it could be used.¹⁷ The Obama Administration has many avenues to regulate pollution and encourage alternative energy sources, if it looks at the CAA and the other laws at its disposal with a new creative eye.

Scientific Integrity

New Whistleblower Protection Act on the Verge of Passage

This article written in collaboration with the Government Accountability Project

Protecting the integrity of science in the environmental decision-making process is one of SCB's major policy issue areas. To protect scientific integrity, we need to protect the ability of scientists to “blow the whistle” when Federal officials refuse to recognize what the science has to say about protecting endangered species, controlling global warming, or any of the other things essential for conserving biological diversity. A key part of that protection is the Whistleblower Protection Act. Unfortunately, it has not lived up to its promise and has, for many years, needed some key improvements. We are now on the verge of seeing several of those improvements enacted.

¹⁶ Fitzgerald represented Defenders of Wildlife in the negotiation of article 3 and the rest of the conservation provisions of the CBD in Nairobi in 1992.

¹⁷ SCB is not the only organization to field this topic. See, for example, the working paper from The Center for Biological Diversity, found at http://www.biologicaldiversity.org/programs/climate_law_institute/pdfs/Yes_He_Can_120809.pdf

The Whistleblower Protection Act of 2009, S. 372, is out of the Senate Committee on Homeland Security and Governmental Affairs and is currently on the Senate calendar with the goal of a “unanimous consent” approval. Once approved by the Senate, the House is expected to respond the following week to address national security rights. The bill will then be “fast-tracked” through the House, and on to a conference committee to reconcile remaining differences. The conference is expected to take place in January, according to the Government Accountability Project, a leader of the whistleblower part of the informal coalition on scientific integrity.

Why This Legislation Matters: This important legislation provides legal protection to Federal employees if they are retaliated against for reporting waste, fraud, and abuse in government. In December of 2008, SCB briefed the Obama Administration on, among other things, the compelling need for actions designed to strengthen the laws that support science across agencies. This is just such a law.

The Whistleblower Protection Act will empower Federal scientists who are aware of suppression, manipulation or misrepresentation of science in Federal agencies or actions to speak out. For the first time, the rights of Federal whistleblowers will be protected through traditional due process and the right to a jury trial.

The protection offered by existing administrative procedures has been greatly compromised over the years through narrow court decisions, and hearings by administrative judges on Merit Systems Protection Board (MSPB) who have little judicial independence. Further, the MSPB rarely rules for whistleblowers: since 2000, the MSPB has ruled for the whistleblower only three times in 56 cases.

The Board is also hindered by the restrictive rulings of the only court designated to hear appeals – the Federal Circuit Court of Appeals, a special court designated to hear all whistleblower appeals. At appeal, whistleblowers have won final judgments in only three out of 213 cases since 1994 according to the Government Accountability Project, a whistleblower law firm and think-tank in Washington, D.C.ⁱ

Next Steps: As the legislation moves through the full Senate, differences in the House and Senate versions will be reconciled and omissions can still be addressed. Examples of difference and omissions included the following:

1. The Senate bill, S. 372, keeps the Federal Circuit’s control over the most significant cases, which are the cases that tend to define the law’s boundaries. The House bill, H.R. 1507, allows the employee a choice of forum.
2. There should be protection under the contractor provision for employees of grant recipients or employees of indirect government spending. This is the case under this year’s stimulus law, and the Whistleblower Protection Act should apply to all Federal spending.
3. Neither bill safeguards a contract employee’s privacy and confidentiality for closed case files. Without such a safeguard, contractors’ files could be used against them.
4. The final bill should provide confidentiality rights for whistleblowers seeking counsel on how to make disclosures that are classified.

Look Into It: The congressmen involved in January’s conference will be senior members of the two committees that produced the bills for the House and Senate – the House Government Reform Committee and the Senate Homeland Security Committee. Talk to your congressional delegation even if they are not on those committees. Let them know your thoughts on this legislation and ask them to

convey your thoughts to the conferees so that we can help whistleblower protection live up to its name and improve the way we protect the integrity of science and the scientists who develop that science within the Federal government.

More information on the WPA can be found at

http://www.whistleblower.org/template/page.cfm?page_id=121

And at http://www.whistleblower.org/template/page.cfm?page_id=227

Learn more about SCB's stance on scientific integrity with the Policy section of our website, at <http://www.conbio.org/activities/policy/ScientificIntegrity.cfm>

Scientific Integrity and Transparency in the New Administration: Delivered as Promised?

This article written in collaboration with the Union of Concerned Scientists

President Obama campaigned on a return to integrity and openness in government, and it is time to take stock of what has been accomplished and what is still to be done.

Most recently on December 8th, the Office of Management and Budget released a memo regarding the Open Government Directive. The memo states that it “is intended to direct executive departments and agencies to take specific actions to implement the principles of transparency, participation, and collaboration set forth in the President’s Memorandum.”

The memo makes four requirements of the executive department: 1. Publish government information online; 2. Improve the quality of government information; 3. Create and institutionalize a culture of open government; 4. Create an enabling policy framework for open government. The memo asked the White House chief technology officer and the OMB director to develop an open government directive within 120 days based on the principles of transparency, participation and collaboration.

However not all groups see this directive as delivering the promised reforms. The Union of Concerned Scientists, for example, stated the following:

How can OMB institutionalize openness and accountability? By requiring agencies to include several provisions in their plans: First, the Federal government should direct agencies to allow scientists to communicate their research and analyses with the press. Second, agencies should improve public access to scientific research by making it easier for government scientists to publish their research results. Third, agencies should follow the lead of the White House and increase public disclosure of meetings agency officials have with people outside the government.

The full statement from UCS can be found [here](#).

The OMB memo regarding open government is at

http://www.whitehouse.gov/omb/assets/memoranda_2010/m10-06.pdf

Find out more at www.ucsusa.org/integrityprogressreport and watch the SCB Scientific Integrity web page as SCB reviews the memorandum and related progress to determine the extent to which the Administration's progress reflects the recommendations we submitted.

Biological Security

Protection for Forests Worldwide Under The Lacey Act-- Enforcement Underway

*This article written in collaboration
with the Lacey Coalition of the Environmental Investigation Agency*

On May 22, 2008, Congress responded to requests from a large coalition of conservation, foresters and scientists, including SCB, and passed the world's first ban on trade in illegal wood. The new law is an amendment to the 100-year old Lacey Act. The Lacey Act has historically been a powerful tool in fighting wildlife crime. Now it is setting global precedent by banning commerce in illegally-sourced plants and plant products. It also puts in place incentives for companies and their home countries to responsibly govern their own natural resources.

Why The Source Is Important: Illegal logging is not only a major challenge to the rule of law as it often entails not just theft, but bribery and corruption; but it is also a major environmental concern. Illegal harvesting can have devastating impacts on important ecosystems and local communities. Ecosystems suffer as harvesting shrinks valuable habitat for species of all kinds, from orangutans and tigers to as yet unclassified ants and beetles.

In addition, illegal harvesting contributes to climate change. Deforestation is decimating one of the earth's most important remaining assets in the fight against climate change. That is the power of forests to sequester carbon. Enforcing existing foreign and domestic laws against illegal logging will aid in fighting climate change as many estimate that a majority of wood in trade in recent years has been illegally harvested in one way or another. (See, p. 1, Washington Post, April 1, 2007, and page 6, Washington Post, December 3, 2009.).

"Illegal" Timber: The Lacey Act does not itself define "illegally sourced" in regard to internationally imported goods to the United States. The definition of "illegally sourced" in this case is supplied by the sovereign nation's own laws to the extent that they regulate the:

- “(I) the theft of plants;*
- “(II) the taking of plants from a park, forest reserve, or other officially protected area;*
- “(III) the taking of plants from an officially designated area;*
- or*
- “(IV) the taking of plants without, or contrary to, required authorization.*

The Lacey amendment also forbids the commerce in or possession of plants that are

*“(ii) taken, possessed, transported, or sold without the payment of appropriate royalties, taxes, or stumpage fees required for the plant by any law or regulation of any State or any foreign law; or
“(iii) taken, possessed, transported, or sold in violation of any limitation under any law or regulation of any State, or under any foreign law, governing the export or transshipment of plants...”.*

When plants are exported from the United States, or in interstate commerce, the Lacey Act requires adherence to any relevant State laws.

Specific enumeration of the types of violations covered by the Act was a key compromise between the Environmental Investigation Agency, the non-governmental organization that led the coalition, and forest products associations who had studied the losses that these most serious violations caused to legitimate producers. By limiting what would be deemed to be violations to those that industry had already found to be the most serious, the industry was assured that the Act would not be used to condemn whole shipments for minor or incidental infractions occurring during their transportation or production.ⁱⁱ

How The Amendment Works: Among other things, the Lacey Act requires importers to provide a declaration with every shipment of plants or plant products. The reason for the declaration is to increase transparency in the trade and to help enforcement authorities by shifting the burden of gathering information to those closest to the transactions. Reporting falsely is a separate violation in addition to the illegal shipments or possession. The declaration must include the scientific name of the plant; the country of harvest; and the quantity, measure and value. The country of harvest is key. For example, a United States importer who imports timber from China that was illegally harvested in Indonesia would be in violation of the law.

The Lacey Act provides for civil and criminal penalties. Civil penalties range from \$250 to \$200,000. Criminal penalties range from misdemeanor penalties accompanied by fine, up to felony fines (up to \$500,000 for corporations) and possible prison for up to five years. All violations of the law will result in forfeiture of the goods.

Implementation: The Animal and Plant Health Inspection Service (APHIS) is the lead implementing agency, and worked with other agencies to phase in enforcement of the declaration beginning on May 1st, 2009. Between May and September, the stages of the phase-in were published in the Federal Register. Comments on those notices are still being analyzed. The declaration requirement is projected to be phased in over a two-year period.

On The Ground: On November 17th, The Fish and Wildlife Service (FWS) raided the Nashville, Tennessee factory of Gibson Guitars. Gibson appears to have been suspected of using hardwoods derived from recently banned timber for some of its premium guitars. If prosecuted, this will be the first Lacey Act case using the new amendment.

For more information from the Lacey Coalition, go to: <http://www.eia-global.org/lacey> and http://www.eia-global.org/PDF/ReadyForLacey_WRIandEIA.pdf for a pdf outlining FAQs regarding the Lacey Act. For more information from the USDA, go to: <http://www.aphis.usda.gov/> and check the SCB Biological Security web page.

Treaties

The Convention on Biological Diversity

SCB has been working with a coalition of organizations and the Secretariat of the Convention on Biological Diversity (CBD) to help the Obama Administration, Congress and future conference attendees better understand the CBD. We recently helped brief the new Assistant Secretary of State Kerri-Ann Jones on the CBD. SCB urged her to instruct her staff to become actively engaged in CBD meetings in preparation for ratification in the next few years by the U.S.

2010 has been declared by the UN as the Year of Biological Diversity. Implementing the special year involve meetings throughout the year in different venues and a special session of the General Assembly to integrate conserving biodiversity throughout the UN's program. SCB has invited several senior environmental lawyers and scientists, including the chief counsel to the Secretariat to the CBD, to help run a short course, symposium and workshop at our 2010 International Congress for Conservation Biology in Edmonton. This will prepare SCB members to play active roles in the meetings preparing for and during the Conference of the Parties to the CBD in Nagoya, Japan in late 2010 where the Parties are expected to adopt new strategic goals for the next decade.

On a related note, SCB and its coalition colleagues met with the Deputy Minister of the Environment and the First Secretary of the Embassy of Japan. We discussed helping the U.S. Senate to better understand the CBD. The U.S. is now nearly the only country on earth not a party to that broadest of all wildlife conservation treaties.

The Convention on International Trade in Endangered Species

In March 2010, the Conference of the Parties to the Convention on International Trade in Endangered Species (CITES) will meet in Doha. The agenda includes proposals to more strictly limit or end commercial, international trade in polar bears and their parts, blue fin tuna, and other species. Japan continues to reject increased protection under CITES for the blue fin tuna, as it has since 1992 when the issue was taken up at the Kyoto Conference of the Parties. SCB's Marine Section will present a letter in support of the strictest protection for polar bears from commercial taking, while allowing native communities to continue traditional uses (and other things not covered by CITES, which includes guided hunts). The Marine Section's letter was approved by the SCB Policy Committee¹⁸.

¹⁸ Some experts disagree with that position and the Society remains open to well-supported arguments for revising our position on this or any issue.

Investment and Procurement

SCB was asked by the House Foreign Affairs and the Senate Foreign Relations Committees to help shape legislation to reauthorize appropriations for the Overseas Private Investment Corporation, a government entity that insures U.S. business initiatives overseas. Based on our existing approved testimonies presented over the past two years, SCB pressed for dramatic reductions in fossil fuel investments to be replaced by renewable and efficiency projects. We also pressed for better environmental assessment procedures. Improvements in the assessment process were included and reductions were required by both sides but most parties were hesitant to support faster reductions despite the serious evidence of climate change moving faster over the past few years.¹⁹

SCB was also asked by the Senate Appropriations Subcommittee on Foreign Operations for our suggestions on a \$300 million dollar international Clean Technology Fund. The Subcommittee staff agreed to press for our suggestions that the fund be limited to the cleanest and safest technologies and that these choices and alternatives be subject to public environmental assessments before they are approved. The majority of parties involved did not want to accept our proposal to expand the fund to cover ecosystem restoration technologies. The Fund seems likely to be housed at the World Bank. Earlier in 2009 SCB participated in two sessions held by the Treasury Department to discuss the Bank's Energy Strategy, which was undergoing a revision. We suggested that the World Bank's energy portfolio move away from coal and oil development. For a detailed analysis of the Bank's energy lending, see the Bank Information Center's recent articles at www.bicusa.org

Keep Up With Policy Developments

The new year will be bringing significant and varied challenges and opportunities to strengthen the policy and science of biological conservation.

SCB Contributes to Wildlife Corridor Legislation: On the radar right now is Representative Rush Holt's wildlife corridors bill. Building on our recommendations to the Obama Transition team, incoming NA Section president Dominick DellSala's testimony before a House subcommittee on combating global warming on public lands, and testimony of the Freedom to Roam Coalition, the legislation will require Federal agencies to consider, in consultation with states and Native American communities, restoring and maintaining corridors of different kinds to accommodate movements of wildlife. Rep. Holt asked the SCB for suggestions in developing his bill and our President elect and

¹⁸ SCB hopes to see limits on OPIC's GHGs in the committee reports of the House Foreign Affairs Committee and the Senate Foreign Relations Committee (S. Rept. No. 111-107). However as of December 16 the report was not yet available. The reauthorization bill (S. 705) was reported out of committee on December 15th and placed on the Senate calendar. For further information readers can go to: <http://thomas.loc.gov/cgi-bin/bdquery/z?d111:SN00705:@@D&summ2=m&>

Treasurer were both able to provide additions that Rep. Holt found very useful over the course of our meeting at the Flagstaff regional conference in October.

Section and Chapter Policy Highlights

The sections and chapters continue to expand their policy activities and impact. These are just a few selected highlights of SCB Policy Program and Section Cooperation from recent months.

The SCB North America Section initiated policy goals for the section to pursue throughout the next three years. These goals were discussed in a one-day policy workshop after the 2009 Colorado Basin Conference in Flagstaff Arizona. Attendees explored how policy priorities at the global and Section levels might help address conservation realities in the Southwestern U.S. and areas with similar challenges. Notable workshop participants included North America Section President, Erica Fleishman, Section President-Elect Dominick DellaSala, SCB President-Elect Paul Beier, SCB Treasurer David Johns, SCB Chapters Representative Fiona Nagle, SCB Policy Director John Fitzgerald, Joanna Prukop, Secretary of Energy for the state of New Mexico, and Dinah Bear, former Chief Counsel at the White House Council on Environmental Quality, along with about two dozen SCB members and very able guests. We hope that these and others will join us as we prepare to add a Northern perspective with another meeting at our International Congress for Conservation Biology in Alberta in 2010. Like the U.S. Southwest, Canadian and northwestern U.S. habitats are facing climate driven energy and water issues and the policy program is using information derived from these meetings to address those issues.

The SCB Europe Section held its second European Congress on Conservation Biology in Prague in September. Five different streams of symposia addressed climate change, the economics of biodiversity, and other issues. With the help of the European Commission, SCB's Policy Director and others were able to travel long distances to participate. Fitzgerald presented an analysis of "How much science is enough for policy makers?" The answer is different depending on the policy making or implementing body and ironically, there is a very low standard for legislators. To see Fitzgerald's analysis and suggestions, including scientific reviews for a climate agreement, see the pdf of his talk on the SCB policy page, at <http://www.conbio.org/Activities/Policy/policyeccb9.pdf>

And **Asia**, of course, hosted **SCB's 2009 meeting in Beijing**. Several talks directly addressed policy issues including an analysis by Erin McCreless of corruption as a factor influencing the success and expense of conservation work in different jurisdictions. In two different symposia, Fitzgerald outlined international and domestic laws for controlling trade in wildlife and for addressing climate change. NASA's chief climate scientist, Jim Hansen, was kind enough to lend some of his slides for the climate talk. The idea in each was to empower those working directly with the resources with a basic understanding of the laws that might help them conserve the resources more effectively. See the "Empower-point" presentations on conbio.org. The wildlife presentation is at <http://www.conbio.org/Activities/Policy/docs/Laws%20Controlling%20Trade%20in%20Wildlife%20&%20Plants3.pdf>; the climate presentation is at <http://www.conbio.org/Activities/Policy/docs/Global%20WarmingJF.pdf>

Marine Section Urges The Administration to Include Noise Reduction in Oceans Policy. On October 16th, on behalf of SCB, our Marine Section submitted a letter to Nancy Sutley, Chair of the Interagency Ocean Policy Task Force of the White House Council on Environmental Policy. The letter expanded upon a similar letter submitted on October 7th by participants of the Workshop on Cumulative Impacts/Effects of Anthropogenic Stressors on Marine Mammals. The workshop participants and SCB Marine Section are concerned that oceanic noise pollution threatens many marine mammals and other species. In consultation with the SCB Policy Director, Marine Section leaders recommended a binding legal standard and process to reduce ocean noise around the world.

Attention to this issue has increased in the recent past through marine mammal strandings, lawsuits, legislative hearings and NRC reports. As sound is often the main sense marine mammals use for navigation and communication, interference with their ability to hear can affect their breeding, feeding and social structure.

The Marine Section and the Policy Office of SCB therefore suggested these additions to the new National Oceans Policy:

1. No net increase in ambient noise occurs in U.S. coastal waters;
2. A schedule and mechanism be established to require and to realize substantial reductions in ocean noise; and
3. A “process that will regularly determine and require the use of the best available noise control and management technologies for ships, harbors, oil and gas exploration and all other significant ocean noise sources in U.S. waters, and by U.S. entities elsewhere in the world, in order to achieve as quickly as practicable noise levels that do not present significant risks of harm to affected species.”

To read the Marine Section’s letter in full, go to

http://www.conbio.org/Sections/Marine/Docs/2009_1016SCBOceansPolicyNoiseLtr.pdf

Chapters Chiming In

Chapter liaisons Aletris Neils and Fiona Nagle have led a series of meetings and conference calls with chapter leaders in which guests including Dominick DellaSala, John Fitzgerald, David Johns, and others have discussed the policy process and opportunities at the chapter level. Chapters are forming or increasing their policy work in impressive places from Columbia to Cuba, to one of the last jurisdictions on earth without full voting representation in a national legislature, the District of Columbia, (Washington, D.C.), USA. Contact Fiona or Aletris for more information if you cannot find it on the website.

For continuing coverage see the chapter and section websites. Find them by going to www.conbio.org, go to the “Get Involved” tab and drop down to either the “Regional Sections” or “Local Chapters” link.

For more information about the section activities and the ongoing work in at the Executive Office, go to <http://www.conbio.org/Publications/Newsletter/Archives/2009-11-November/v16n4013.cfm>

We Need You – For Policy Task Forces

SCB is forming new and exciting task forces. We want to encourage you to volunteer for task force work that you could help carry out or lead. We will start by forming task forces on the five global priority issues. Some of you have already volunteered and others are welcome. Let us know if you would like to help by writing to taskforce@conbio.org.

Tell Us What You Think.

The Policy Insider has been redesigned visually, and we want to be sure we are producing the best possible articles and updates for our readers. What can we do better? Would you like to see more in-depth articles? More links to related issues? We welcome your input. Please let us know what you would like to see in future issues of the policy Insider. Write us at feedback@conbio.org and please indicate “Policy Insider Feedback” in the subject line.

SCB Policy Welcomes Lyn Arnold, Policy Assistant

The Society would like to welcome Lyn Arnold, J.D., as the new Policy Assistant. Ms. Arnold is a recent graduate of Seattle University School of Law where she concentrated on environmental law and policy. She also had a very successful career as an advertising art director and creative director, working nationally and internationally, before entering the law. A native Texan, Ms. Arnold is widely traveled and a staunch advocate for the environment with particular interest in the ESA, MMPA and critical habitat issues. She is licensed to practice law in the State of Maryland.

ⁱ Full disclosure – John Fitzgerald, now Policy Director of SCB, once worked for GAP and also won an important case, his own, against the Bush Administration, before the MSPB in 2004 with the help of another whistleblower protection group, Public Employees for Environmental Responsibility.

ⁱⁱ Full disclosure – John Fitzgerald, now Policy Director of SCB, was the attorney representing EIA at the time of the primary negotiations with industry and the initial drafter of the amendments.