

**TESTIMONY OF CRAIG MANSON, ASSISTANT SECRETARY FOR FISH AND WILDLIFE AND
PARKS, DEPARTMENT OF THE INTERIOR, BEFORE THE HOUSE RESOURCES
COMMITTEE, REGARDING H.R. 2829 AND H.R. 3705**

March 20, 2002

Mr. Chairman and Members of the Committee, I am Craig Manson, Assistant Secretary for Fish and Wildlife and Parks at the Department of the Interior (Department). This is my first occasion to appear before you, and I appreciate the opportunity to present the Department's views regarding H.R. 2829, the "Sound Science for Endangered Species Act Planning Act of 2001," and H.R. 3705, the "Sound Science Saves Species Act of 2002."

We greatly appreciate the Committee's interest in endangered species conservation. For the past several weeks, there has been much discussion about the use of good science in our decision-making. We recognize that some individuals who have been directly impacted by the Endangered Species Act (ESA) view it as inflexible. Given the impact that our resource management decisions can have on communities and individuals, the species conservation decisions we make must be based on the best available science. Our data and scientific information must meet the highest possible ethical and professional standards. At the outset, I want to say that improving our science has been one of Secretary Norton's highest priorities, and it will be one of mine.

H.R. 2829 and H.R. 3705 seek to ensure independent scientific review of the science underlying our decisions. Indeed, this is one of the positive aspects we have taken out of the National Academy of Science's review of the U.S. Fish and Wildlife Service's (Fish and Wildlife Service) decisions in the Klamath matter.

"Independent scientific review" can be a broad concept that goes beyond the traditional expectations of a simple peer review process. With this thought in mind, I offer the following principles that we believe will form a strong basis from which to work. We will keep these principles in mind as we move forward in this process.

First, there is no monopoly on good science. The Department must cast a broad net to take advantage of the independent scientific expertise of groups like the state fish and wildlife agencies. We believe that this will ensure that our decisions are based on the best available science, not just one group's, or another's, interpretation of the science.

We must also acknowledge that science is not exact, and that even expert opinions can differ. Where there are differing interpretations of the science behind our decisions, we must provide opportunities for both Department scientists and stakeholders to air those differences and, wherever possible, resolve them. It must be an open process.

Finally, as I noted above, our resource management decisions can impact both communities and individuals. For this reason, we need to implement a robust, independent review process for significant resource decisions. Yet we must also recognize that not all decisions have the same impact. The scientific review process should reflect this fact, and it should have the flexibility to allow it to be adjusted accordingly.

Although we support the general concepts advanced by these bills, we also have concerns with the structural and budgetary impacts of enacting this legislation. We also believe that the Department has existing

authority to implement improvements that will greatly enhance the science we use. For example, the joint Fish and Wildlife Service/National Marine Fisheries Service (NMFS) "Policy on Information Standards Under the Endangered Species Act," published in the Federal Register on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to field biologists and managers regarding the use of scientific information in the decision process. We must ensure that this policy is fully and effectively implemented.

We must also recognize that independent scientific review will not, in and of itself, guarantee that good decisions are made. Thus, other efforts to ensure that high standards of scientific integrity and ethics are in place throughout the Department are vital to maintaining public trust and confidence in our decision-making processes.

At a hearing on March 6, 2002, Dr. Steve Williams, Director of the Fish and Wildlife Service, told this Committee that he is in the initial stages of developing a multi-faceted approach to ensure and enforce high standards of scientific integrity and ethics in addressing the Fish and Wildlife Service's responsibilities. We believe that the steps outlined by Dr. Williams will provide long-term emphasis on professionalism and ethics.

At that hearing, Dr. Williams also relayed our commitment to fully utilize good science support in the administration of the ESA, including bringing independent scientific expertise into that process. We plan to seek advice from respected wildlife management professionals, academia, States, and the private sector in this endeavor. The Department is also examining which decisions and processes from all bureaus -- not just the Fish and Wildlife Service's ESA activities -- would benefit from the addition of peer review. The findings of this review will be rapidly implemented.

Another initiative that we are developing will assemble multi-disciplinary teams that will be assigned to assist Fish and Wildlife Service regional office staff on an as-needed basis. It is our belief that utilizing these teams -- to be made up of senior-level agency staff -- will bring both experience and multi-dimensional thinking to large-scale and difficult issues. We hope to implement this effort soon.

We believe that all of these administrative initiatives are consistent with the intent of H.R. 2829 and H.R. 3705.

As I previously mentioned, we appreciate and support the intent of these bills to further ensure the application of sound science and peer review. Nevertheless, we do have concerns with the bills as currently drafted. We believe that the additional processes added by the two bills would be costly to implement. These process issues include, for example, assembling and compensating the independent review boards and implementing the review board provisions themselves. Moreover, both bills offer prescriptive solutions and lack flexibility in implementation. For example, both bills prescribe which decisions -- regardless of the complexity of the underlying science or the nature of the underlying issues -- would act as triggers requiring independent scientific review.

We are concerned that the considerable new process required in both bills will impact the Fish and Wildlife Service's ability to provide consultations and other decisions in a timely manner and, in some cases, may compromise the Fish and Wildlife Service's ability to meet statutory deadlines. For example, Section 3 of H.R. 2829 requires that all listing decisions, de-listing decisions, development of recovery plans, or jeopardy findings, must be reviewed by an independent panel before becoming final, with an opinion to the Secretary within 3 months. For listing decisions, it would be difficult to accommodate this three month provision and

still meet the one year statutory time frame between proposed and final rule-makings. The bill would make it necessary to extend comment periods to a minimum of 120 days.

Section 3(c) of H.R. 3705 contains similar review provisions that are equally problematic. Neither bill would extend the existing statutory deadlines for making decisions on petitions. With the additional time needed to comply with these new requirements and the increased workload imposed by these and other provisions in the legislation, it is likely that the Department would not be able to meet the statutory deadlines in many cases, opening the door to additional litigation.

Similarly, section 3(d) of H.R. 3705 would allow "any person" to request an independent review of jeopardy Section 7 biological opinions. Currently, the Fish and Wildlife Service is obligated to provide an opinion within 135 days of the request unless the time period is extended by mutual consent. The process in H.R. 3705 would increase the time period by at least 120 days, and probably longer. It should also be noted that allowing any person to request review of these findings would invite persons not associated with a particular consultation process to request review of information developed through that process. In particular, it would allow an individual or organization who wanted stronger or more restrictive reasonable and prudent alternatives (RPAs) attached to the opinion -- not just an unhappy applicant -- to trigger the review process. The resulting delay in reaching a final decision could have a detrimental economic impact on an applicant willing to accept the proposed RPAs.

Mr. Chairman, our ultimate goal is to ensure that better decisions are made. As I previously stated, we believe that independent scientific review can help to ensure that there is better science behind our ESA decisions. Many of our policies, both in existing practice and new initiatives, encompass the principles of, and many of the intentions behind, H.R. 2829 and H.R. 3705. I have presented, in very summary fashion, some of the general implementation problems that we have identified in these bills. We look forward to working with the Committee as we strengthen the scientific integrity of our decisions. I believe we need to be more creative and consultative as we move forward to improve our implementation of the ESA.

We hope that we can develop a system that contains stronger safeguards to ensure our decisions are grounded on sound scientific footing but, yet, has the flexibility to ensure that the decisions which truly need independent scientific review are the decisions that receive it. We stand ready to work with the Committee toward that end.

Mr. Chairman, this concludes my prepared statement. I will be pleased to respond to any questions you may have.

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