



Conservation Issues Briefing

June 2012

This is the third briefing on conservation issues of interest to NCEL members. Thanks to a generous grant from the Wood Tiger Fund, NCEL is partnering with Ruth Musgrave, J.D., of Wildlife Policy Consulting Associates to develop a clearinghouse on conservation issues that impact states. The clearinghouse will cover issues pertaining to endangered species, fish and wildlife, public lands, land and water use, urban sprawl, and climate change.

Each briefing covers a sampling of the latest conservation developments that may be of interest. Please let us know what conservation issues are of importance in your state, and what kinds of resources or research you would find useful.

Ruth Musgrave can be reached at rmusgrave@comcast.net, or 360-705-2178.

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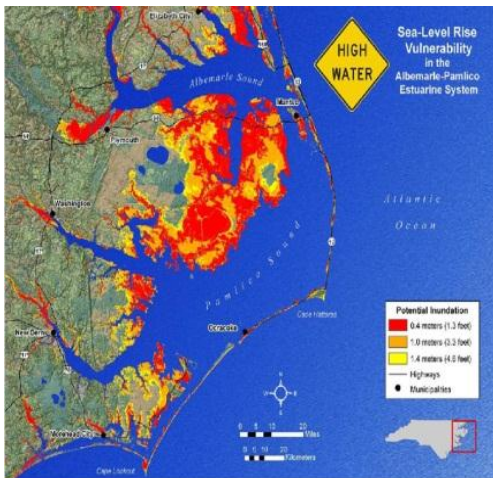


Climate Change

California to Experience Over 3 Foot Sea Level Rise this Century - The National Academy of Sciences issued an extensive [report](#) in June 2012 that predicts that California's coastal waters will rise by more than 3 feet by 2100. However, the coast south of Cape Mendocino will experience waters rising 16 inches to 4.5 feet by the end of this century. But, it is projected that unless there is a major earthquake, Washington and Oregon may experience less sea level rise because of land rising from plate tectonic pressure. The report was sponsored by the States of California, Washington and Oregon, NOAA and the Corps of Engineers.

Gulf Coast States' Industries Vulnerable to Climate Change - A new [report](#), "Impacts and Adaptation Options in the Gulf Coast," concludes that climate change is having and will continue to have major impacts on the energy and fishing industries along the Gulf Coast, especially along the central and western U.S. Gulf Coast. Hurricanes, storm surges, sea level rise, and loss of wetlands are all exacerbated by climate change. The June 2012 study was published by the Center on Climate and Energy Solutions, or [C2ES](#).

East Coast Sea Level Rise is Faster than Average - The 600 miles of coastline along the East Coast from Cape Hatteras to Boston are experiencing sea level rise 3-4 times faster than the global average. The [U.S. Geological Survey study](#) found that the "hot spot" of rising sea is caused by the slowing of the



Gulf Stream from influxes of fresh water from Greenland ice melting. As the Gulf Stream slows, the current is less able to pull coastal water away from the shore. Meanwhile, North Carolina legislators with [ties](#) to the Heartland Institute just passed legislation requiring state agencies to use only historical projections of sea level rise, or sea level rise based upon past patterns rather than upon scientific projections. On June 27, Scientific American reported that "Less than two weeks after the [NC] senate passed a climate science-squelching bill, research shows that sea level along the coast between N.C. and Massachusetts is rising faster than anywhere on Earth." The House voted to [revise HB 819](#) so that agencies are not foreclosed from considering the possibility that sea level rise might

accelerate, but it retained a 4-year period during which only a linear rate of increase can be considered. The Virginia legislature recently commissioned a \$50,000 study on the effect of sea level rise on its coast, but a Republican state delegate cut "sea level rise" from the draft, calling it a "left-wing term."

Federal Appeals Court Upholds EPA Greenhouse Gas Rules - On June 26, 2012 a [US Court of Appeals decided unanimously](#) to uphold a challenge to four interconnected EPA rules on greenhouse gas emissions (GHGs). The D.C. Circuit appeals court validated EPA's 2010 regulation of GHGs from light duty motor vehicles (the "Tailpipe Rule"); and held that the Tailpipe Rule caused GHGs to become regulated pollutants under the Clean Air Act. It also upheld EPA's 2009 findings that six classes of GHGs endanger public health and welfare by causing climate change, and that new motor vehicle emissions contribute to GHG pollution. In 2007 the Supreme Court in *Massachusetts v. EPA* required the EPA to make a science-based finding as to whether new vehicle emissions cause or contribute to endangerment of public health and welfare. EPA will now likely finalize its proposed more stringent emissions standards for vehicles. A number of state legislatures have passed legislation calling on EPA not to act, but this decision reaffirms the legal requirement that states must regulate GHG emissions.

Agriculture and Conservation

EPA Considers Ban on Herbicide Atrazine – The widely used herbicide atrazine is being reviewed again by the Environmental Protection Agency for possible banning. Atrazine has been found to cause

severe birth defects and sex changes in amphibians and other wildlife. It is sprayed on nearly all U.S. crops of corn, sorghum and sugarcane, but has been banned in the EU since 2004. Dr. Tyrone Hayes of the University of California Berkeley has done extensive research showing that atrazine is an endocrine-disrupting pesticide that causes cancer, low fertility, slowed development, and remains in the environment for decades. See Dr. Hayes' web site on atrazine at www.atrazinelovers.com.

New House Version of Farm Bill Cuts Conservation - The latest U.S. House version of the Farm Bill cuts \$6 billion in funding for conservation programs for farmlands. The bill eliminates direct payments to farmers, which also eliminates "conservation compliance" that is required to receive subsidies. Thus farmers would have no motivation to protect wetlands and riparian areas which are critical natural areas for wildlife and birds. In addition, the bill would have the Federal Insecticide, Fungicide and Rodenticide Act trump Endangered Species Act protections, and would waive the Clean Water Act for pesticides. Other changes would allow logging of "critical areas" of national forest with no environmental review. Funding for conservation measures was already cut by 25% by the Senate. The Farm Bill is still under consideration by the House.

Chesapeake Bay Watershed Implements Agriculture Conservation - The U.S. Department of Agriculture's Natural Resources Conservation Service announced in June the achievement of "historic levels of conservation implementation in the Chesapeake Bay watershed during the past two fiscal years, leading to water quality improvements, wildlife habitat enhancement and support of rural economies." Through the Chesapeake Bay Watershed Initiative and other Farm Bill programs, NRCS helped farmers, forest landowners and other partners in the 5-state Chesapeake Bay watershed voluntarily install conservation practices on a total of 650,000 acres of working lands, including:

- 262 new waste storage facilities to help farmers manage manure
- 151,689 acres of nutrient management to improve the rate, timing and method of nutrient application
- 7,114 acres of access control to exclude livestock from streams
- 121,573 acres of reduced tillage to reduce soil erosion and improve soil quality
- 136,501 acres of cover crop to reduce nutrient losses
- 65,317 feet of terraces to control soil erosion

Note: In May 2012 Maryland became the first state in the nation to ban arsenic in poultry feed.

Resources on Agriculture and Conservation:

- *Defenders of Wildlife, John Motsinger (Farm Bill and agriculture expert):* jmotsinger@defenders.org.
- *Missouri Coalition for the Environment – “Our Future? A Vision for a Land, Water, and Economic Ethic in the Upper Mississippi River Basin,” April 2012.*
- *Environmental Defense Fund, Eileen McLellan (concentration on wetlands and other “green infrastructure” to enhance ecosystem services in agricultural landscapes):* emclellan@edf.org

Biodiversity Loss

Gulf of Mexico Biodiversity Dropped After Oil Spill - Microbes along the Gulf of Mexico coastlines have dropped significantly since the 2010 BP oil spill in the Gulf. The historic diversity of microbes and organisms dropped to a very few organisms, most of which can digest oily hydrocarbons. The research was performed by scientists at the University of California at Davis, and was published in “PLoS ONE” on June 6, 2012.

Species Extinction Numbers are Numbing – Scientists report that the number of species worldwide that may go extinct by the end of the century is in the millions, and that Earth’s sixth mass extinction [may be underway](#) if current critically endangered species reach extinction. A mass extinction is defined as the loss of ¾ of species on the planet in a relatively short period of geological time. And a subspecies of the Galapagos giant tortoise winked into extinction with the death on June 24 of “Lonesome George,” the 100-year-old Pinta Island giant tortoise that was a huge draw for tourists to the Galapagos Islands.

Rio+20 Conference Ends with a Whimper - The United Nations Conference on Sustainable Development “Rio +20” was held in June, with almost 50,000 attendees and 100 heads of state. The UN Secretary-General opened the meeting by stating that the world is on the brink of irreversible damage to the environment, and “it is time for all of us to think globally and locally.” Although an agreement was reached, titled [“The Future We Want,”](#) there were no enforceable commitments or treaties to reduce climate change or address other environmental challenges. There were over 700 hundred [voluntary commitments](#) made, however, such as Microsoft’s commitment to be carbon-neutral by 2013.

Resources on Biodiversity:

- “Planning for Biodiversity: Authorities in State Land Use Laws,” report by Environmental Law Institute and Defenders of Wildlife, 2003.
- Center for Biological Diversity: www.biologicaldiversity.org.
- “State-Based Alternatives for Protecting Wildlife,” Environmental Law Institute, 2005.
- “Saving Biodiversity: A Status Report on State Laws, Policies and Programs,” report by Defenders of Wildlife and Center for Wildlife Law, 1996.

Land Use and Public Lands

Congressional Attacks on Public Lands - The number of bills currently pending in Congress that open or dispose of our public lands is stunning. A new report by Environment America, “Trashing Our Treasures,” outlines some of these bills and reports on their direct to impact to states, using examples of Western states such as California, Midwest states such as Minnesota, and East Coast states such as Virginia. See the report on NCEL’s web site.

CA County’s Claim to Desert “Road” Nixed by Federal Court - Inyo County, California’s claim to a road on federal land in a Death Valley wilderness area was invalidated by a federal judge. In *County of Inyo v. Dept. of the Interior*, No.CV F 06-1502 (E.D.Calif., June 6, 2012), the court held that rather than

being a question of state versus federal law, the dirt road was not available for a quiet title claim by the county under an 1866 law. Claims to federal public lands are being made by local and county governments with more frequency, as western state legislatures are considering bills that make claims for control or ownership of federal lands.

Sportsmen’s Group Concludes that Conservation Trumps Development - The 500-organization Sportsmen for Responsible Energy Development has issued a report, "[Conserving Lands and Prosperity: Seeking a Proper Balance Between Conservation and Development in the Rocky Mountain West](#)" which concludes that conservation of natural areas is economically preferable to oil and gas and other natural resource development. The report finds that communities adjacent to public lands managed for conservation and recreation achieve higher levels of job, income, and population growth than those with higher percentages of lands managed for natural resources extraction.

State of Alabama to Vote on Continuing “Forever Wild” - In November of 2012 voters in Alabama will decide whether to reauthorize the Forever Wild program under which thousands of acres have already been protected as natural areas. The Forever Wild Coalition consists of conservation, environmental, hunting and fishing, outdoor recreation and business entities who support the program to protect natural areas in the state. See www.protectforeverwild.org.

Wyoming to Appeal Roadless Rule Validation to U.S. Supreme Court - In the case of *State of Wyoming v. U.S. Department of Agriculture*, Nos.08-8061, 09-8075 (10th Cir., Oct. 21, 2011) the Tenth Circuit Court of Appeals reversed a lower court and ruled against the State of Wyoming on the validity of the Roadless Area Conservation Rule of 2001. The Roadless Rule restricts development on about 50 million acres of national forest roadless areas. The State of Wyoming challenged the Rule and won in the lower court. But the 10th Circuit (as well as the 9th Circuit) held that it was valid. The Governor of Wyoming announced in the spring of 2012 that the State would appeal to the U.S. Supreme Court.

North Carolina Accidentally Overrides Veto of Fracking - A bill to allow fracking in North Carolina passed the state legislature, but was vetoed on July 2 by Governor Purdue. Then an override of the veto passed with a 60% vote when a state representative accidentally pushed the wrong button to vote. The vote could not be withdrawn because it affected the outcome. Fracking is controversial in most states because of the massive amount of water that is used, its exemption from the Safe Drinking Water Act, the unknown chemicals used to break apart oil shale in the ground, and spills and dumping of toxic chemicals.

Wildlife Corridors

New ID Wildlife Underpass is 100% Effective – A new underpass under Idaho State Road 21 near the Boise area has apparently achieved a 100% reduction of wildlife deaths and auto accidents and injuries. The underpass is the first ever in Idaho, in a location where about 90% of a herd of 5,000-8,000 mule deer and 300-1,800 elk migrate across the highway each fall. The Department of Transportation worked with the Idaho Fish and Game Department, using federal stimulus money for the project. An 8-foot tall fence along the highway guides animals to the underpass. Idaho lawmakers also made it legal to pick up

roadkill if Fish and Game is notified. Wildlife underpasses have reduced vehicle-wildlife collisions in Arizona, Colorado, Florida, New Mexico, Wyoming, Colorado, and Banff National Park, Canada.

Western Governors Association Works on Wildlife Corridor Issues – The Western Governors Association in 2007 created the Wildlife Corridors Initiative, which was adopted unanimously by the 19 western states. The Wildlife Council of the WGA recently announced that three new wildlife mapping “Crucial Habitat Assessment Tools” or CHATS, are available for planning large-scale energy, transportation and land-use projects. The tools were developed as part of the Wildlife Corridors Initiative. The wildlife mapping tools now available include:

- Montana Department of Fish, Wildlife and Parks Crucial Habitat Planning System <http://fwp.mt.gov/fishAndWildlife/conservationInAction/crucialAreas.html>
- Washington Department of Fish and Wildlife Priority Habitat and Species <http://wdfw.wa.gov/mapping/phs/>
- The 5-State Southern Great Plains Crucial Habitat Assessment Tool (Lesser Prairie Chicken) <http://www.kars.ku.edu/maps/sgpchat/>

Unused Fences Removed for Wildlife Migrations – Wildlife migrations that have existed for millennia, can be impeded or even blocked by fences. But the U.S. Forest Service is hoping to remove a number of unused fences to assist wildlife migrations. And with the assistance of the Wyoming Game and Fish Department, miles of old fence in the Shoshone National Forest near the North Absaroka Wilderness in Wyoming, were removed by volunteers this summer for wildlife migration corridors. The National Parks Conservation Association also schedules regular [volunteer fence removal](#) to open the area north of Yellowstone National Park for pronghorn migration.

Natural Gas Development on BLM Land Reduces Wildlife Habitat – A 5-year study by the [Wildlife Conservation Society](#) found that high quality wintering habitat for the pronghorn has been reduced by 82% in the Greater Yellowstone Ecosystem by the recent sharp increase in natural gas development. The area hosts the largest pronghorn migration in the world. Mule deer have already declined by 50% in the area. Recommendations include data collection on populations and distribution before development; keeping development low in key wintering areas; monitoring habitat and populations; and use of directional drilling to reduce habitat loss and fragmentation. Co-author Joel Berger stated: “Ultimately this is a policy issue for petroleum extraction on U.S. public lands.”

Wildlife Corridors Resources:

- [Western Governors Association's Initiative on Wildlife Corridors and Crucial Habitat](#)
- [New England Governors' Conference Blue Ribbon Commission on Land Conservation](#)
- Center for Large Landscape Conservation: www.climateconservation.org.
- Practitioners Network for Large Landscape Conservation: www.largelandscapeconservation.org.
- U.S. Fish and Wildlife - Landscape Conservation Cooperatives: <http://www.fws.gov/science/shc/lcc.html>