



Vivian Daub, Director, Planning Staff
Office of Planning, Analysis, and Accountability
(Mail Code 2723A),
Office of the Chief Financial Officer,
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue NW
Washington, DC 20460

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Delivered by Email and Registered Mail:

RE: 1) Comments from the Society for Conservation Biology (SCB) on Docket ID:
EPA-HQ-OA-2010-0486, Draft FY 2011-2015 EPA Strategic Plan

INTRODUCTION

The Society for Conservation Biology is taking this opportunity to submit comments in response to the EPA's release of its Draft FY 2011-2015 Strategic Plan for public review and comment.

The Society is an international professional organization dedicated to promoting the scientific study of the phenomena that affect the maintenance, loss, and restoration of biological diversity. The Society's membership comprises a wide range of professionals committed to the conservation and study of biological diversity: resource managers, educators, government and private conservation workers, and students make up over 7,500 members worldwide.

The Draft Plan identifies five strategic goals:

- Goal 1: Taking Action on Climate Change and Improving Air Quality
- Goal 2: Protecting America's Waters
- Goal 3: Cleaning Up Our Communities
- Goal 4: Ensuring the Safety of Chemicals and Preventing Pollution
- Goal 5: Enforcing Environmental Laws¹

¹ EPA Strategic Plan home page, available at <http://www.epa.gov/ocfo/plan/plan.htm>, accessed July 2010.

SCB includes a fair number of ecologists and lawyers who have in common the understanding that the workings of one element of a system affect the workings of the others and the understanding that agencies have a duty to implement all of the laws they are charged to implement even if a few take more resources and time.

Therefore we encourage you to cover all of your legal duties in your strategic plan and not just the top several, and to reach out to the scientific community and affected citizens to expand your capacity to do so. In order to do that, EPA should work with the White House and Congress to restore the authority and funds to pay those who bring valuable information to agency proceedings that might not otherwise be available to the agency as DOE and FERC were doing in the late 70's with the blessing of the Comptroller General until rider ended that practice.

We also encourage you to combine forces with the other Federal agencies having considerable powers under basic laws from the Endangered Species Act, NEPA, NFMA, to the Securities Act's disclosure requirements and the Justice Departments' core statutes for protecting the integrity of the Federal process such as 18 USC 1001, 1505 and 371, being brought to bear in the Gulf oil spill investigation now.

Your specific objectives should go beyond tons of pollution reduced and investigations opened. They should set objective criteria for health of people and ecosystems and meet them as well. Your plan should be a vision of not just the possibility of sustaining what we have but of a restoration that creates an economy that is itself restorative of our health and the health of the planet. This is not far away now or unimaginable, in fact, we know what we need to do.

We encourage you to integrate your plan with international authorities and other nations and with non-governmental actors – from NGOs and scientific societies to socially responsible investment firms, and to report on progress publicly through the Government Performance and Results Act annually.

**Goal 1:
Taking Action on Climate Change and Improving Air Quality**

The Society supports the EPA's efforts to reduce GHG emissions and develop adaptation strategies to address climate change.²

It appears that the President and EPA Administrator do not understand how serious and extensive is the damage now being done by greenhouse gases and other climate forcing agents and other air pollutants most of which come from fossil fuel combustion and which we can reduce immediately with no net cost in the medium term (see Climate Principles

² Draft Strategic Plan at 9.

and notes). Just today, for example, news came of an article in the peer-reviewed journal Nature, that phytoplankton has been reduced by nearly 40% in direct proportion to temperature increases. That is nearly the same as saying the ocean life is being reduced in parallel and as saying that the climate sequestration services of the ocean are also declining as we point out in our climate principles that many of our large tropical forests and temperate forests are also declining in health and net growth rates. Together these mean that nature cannot keep up with increased emissions and is beginning now to fade to different forms of life in the same areas that are likely to support lower levels of human populations overall, as sources of water dry up and people fight over arable land with water enough to grow crops as we have seen in Darfur and elsewhere.

EPA must take the lead among agencies, while working closely with the others to implement a mitigation strategy using the vast array of existing legal authorities (See, Curtis Moore, “Addressing Climate Change Under Existing US Laws” E.L.R., February 2010.) and do so very quickly for the majority of scientists agree that we must reduce global GHG emissions and ambient levels in the next few years and restore natural sequestration that has been lost asap. SCB asked the Obama Transition team in late 2008 to have the agencies prepare a joint climate strategy (see attached Recommendations....).

The US did not do that for the Copenhagen Conference and should certainly do that before the Conferences of the Parties to both the UNFCCC and the Convention on Biological Diversity later this year. The US has ratified one and signed the other. The US is already under legal obligation to protect wildlife and ecosystems from excess air pollution via the Endangered Species Act and the Clean Air Act’s secondary standards. To make sure the rest of the world keeps up, we should help set the pathway and standards high under both UNFCCC and/or its future protocols and/or Section 115 of the CAA in agreements between willing nations and the US. (See SCB comments on Ozone standards, attached, and see also articles in our Policy Insider (www.conbio.org) exploring the option of using Best Available Control Technology and related authorities more broadly by seeking first increases in efficiency and renewables as control technologies.)

The President should pledge now to veto any law that would remove the duty or authority of the agencies to respond to new compelling science and technology as the CAA and others are intended to do. (See SCB Climate Principles on retaining existing authorities.)

Using the Clean Air Act and the Endangered Species Act’s Section 7(a)(1) authorities EPA should cap and reduce GHGs from every major sector, including agriculture, animal husbandry, and forestry, with rewards and consequences in proportion to their performance.³ Together these three account for roughly 40% of the global greenhouse gas emissions.⁴ When properly

³ SCB called for such a cap in our comments to the US House Agriculture Committee in April 2009. http://www.conbio.org/Activities/Policy/docs/SCB_House_Ag_CC_Comments.pdf

⁴ The FAO estimates that livestock alone account for 18% of the greenhouse gas effect, largely through methane released from their digestive tracts, but others, such as Robert Goodland, former environmental economist at the World Bank, and staff director of the Bank-sponsored Extractive Industries Review, have suggested that the number is significantly higher. FAO (www.fao.org): “Forests have four major roles in climate change: they currently

managed, natural ecosystems provide the most effective means for sequestration and conversion of CO₂ to released oxygen and carbon stored in growing plants. As an example, mature and old-growth forests in the Pacific Northwest are the nation's leading carbon storage ecosystems⁵ and should be conserved to retain long-term carbon stores.

Where EPA has been blocked from applying its authorities in this case and in any of its general laws, as in the case of livestock methane, in the Interior Appropriations rider from FY2010, the application of the Safe Drinking Water Act to "Fracking" for natural gas, and the application of the Clean Water Act to certain livestock practices, the EPA should highlight the costs to society to help other Federal agencies, as well as state and local agencies and courts know so that they can more effectively enforce public nuisance laws and other measures; so that the SEC can require full disclosure of these potential liabilities by the corporate sponsors of them; and so that other countries will know the level of harm do to trans-boundary pollution unregulated here.

In the attached Climate Principles, and in the attached testimony on Federal Lands and Climate Change, SCB recommended a target of 350 ppm CO₂ equivalent be reached asap in order to halt the harm we are experiencing at levels well above that already. To reach the 350-ppm equivalent target, each nation and each sector (e.g., power generation⁶, commercial, industrial, agricultural, forestry, natural areas managers) should have annual greenhouse gas reduction and biological sequestration targets – with rewards and consequences in proportion to their performance. One important step that can be taken in this regard is to adjust land-use practices to reduce greenhouse gas emissions. Policy responses:

- Adjust current agricultural subsidies to provide incentives for greenhouse gas converting, soil conservation, and environmentally responsible and nutrition-enhancing stewardship.

contribute about one-sixth of global carbon emissions when cleared, overused or degraded; they react sensitively to a changing climate; when managed sustainably, they produce wood fuels as a benign alternative to fossil fuels; and finally, they have the potential to absorb about one-tenth of global carbon emissions projected for the first half of this century into their biomass, soils and products and store them - in principle in perpetuity." FAO on Livestock: "FAO's Intergovernmental Group on Meat and Dairy Products has recommended that countries should coordinate their livestock policies and practices to help the sector achieve its full potential in mitigating climate change. The Intergovernmental Group said in a statement that the livestock industry needs to take steps to reduce the high level of its Greenhouse Gas (GHG) emissions as well as to adapt to climate change.

Counting the complete food chain involved in meat and dairy production and distribution, up to 18 percent of global anthropogenic greenhouse gas emissions is produced by these activities. Potential for mitigation is therefore considerable."

⁵ Smithwick, E.A.H., M.E. Harmon, and J.B. Domingo. 2002. Changing temporal patterns of forest carbon stores and net ecosystem carbon balance: the stand to landscape transformation. *Landscape Ecology* 22:77-94.

⁶ Within the energy sector, it is essential to include the full and net life-cycle costs of all GHG emissions and all forcing agents such as black soot, a result of certain kinds of fossil fuel combustion. We must also understand the full environmental and social costs of these activities. For example, methane is emitted from the pools behind many large dams, and such dams also have many other public health and environmental costs, a fact that is often not understood by policy makers nor counted in hydroelectric powers' net GHG contributions – See, Kemenes, A., B. R. Forsberg, and J. M. Melack. 2007. Methane release below a tropical hydroelectric dam. *Geophysical Research Letters* 34.

- Require agencies to treat greenhouse gases as a metric for land-use decisions through environmental assessment requirements and other laws and policies in order to reduce dangerous emissions.
- Manage ecosystems to optimize biological carbon sequestration potential.

Goal 2: Protecting America's Waters

SCB has a Fresh Water Working Group and a Marine Section. Both of these would be eager to help EPA reach its goals, including statutory goals such as The Clean Water Act's "Fishable, Swimmable" status for our navigable waters. Again, in formal ESA consultation with Federal Wildlife Agencies, EPA can set whatever standards are necessary to achieve the recovery of most threatened species in aquatic ecosystems as they are affected by water pollution. In fact, EPA has a duty to do so and we suggest that you consult with them on this plan, even though it may not be an action-forcing plan. It is close to one, however, and should occasion the opportunity to consult over longer-term objectives and actions.

Goal 3: Cleaning Up Our Communities

Human communities depend on biotic communities and EPA's direct and indirect statutory duties contain wildlife – based standards as well as human based health standards. This goal should reflect that. As the Ann E. Casey Foundation has shown, for example, trees make communities better in many ways and the right trees can feed people, reduce pollen, shade them in heat and refresh the air. SCB has many members doing urban planning and related work who can help here. Please amend this Goal accordingly.

Goal 4: Ensuring the Safety of Chemicals and Preventing Pollution

The Draft Plan states the following:

Chemical safety is one of EPA's highest priorities. EPA's approach to chemical risk management leverages expertise, information, and resources by collaborating with other countries, federal agencies, states, tribes, and the public to improve chemical safety. Children and other disproportionately exposed and affected groups, including low-income, minority, and indigenous/tribal populations, require more explicit consideration in EPA's chemical risk assessments and management actions⁷

⁷ Draft Strategic Plan at 19.

The Society asks whether EPA will also take into consideration chemical effects on wildlife. For example, at the Society's recent International Congress on Conservation Biology, plenary speaker Dr. Tyrone Hayes discussed the following:

The herbicide, atrazine, is a potent endocrine disruptor. My laboratory's studies in amphibians have shown that atrazine both demasculinizes and feminizes exposed males at levels as low as 0.1 ppb. Our previous work examined morphological effects, including the loss of androgen-dependent sexually dimorphic features, and the development of estrogen-dependent features in exposed males. These findings are consistent with an induction of aromatase, resulting in decreased androgen secretion and inappropriate estrogen synthesis and secretion. Our ongoing studies focus on behavioral effects in male frogs exposed throughout life and demonstrate both the loss of male reproductive behavior and the induction of female-typical behavior in exposed males. These data on amphibians and the proposed mechanism are consistent with findings across vertebrate classes, including humans, and raise concern about the role of this common environmental contaminant in reproductive hormone-dependent cancers in and declining fertility in humans.⁸

EPA has a duty to consult with the Federal wildlife agencies under the ESA concerning the effects of chemicals it permits people to use and not just within the processes of the FIFRA and TOSCA.

Goal 5: Enforcing Environmental Laws

The Society fully supports more rigorous enforcement and implementation of environmental laws. Although the draft plan calls out specific enforcement goals such as air quality violations, clean water violations, and hazardous chemical pollution violations, the Society encourages the EPA to broaden that goal.

SCB has empanelled a Legal Advisory Team whose members expect to help our non-lawyers learn about their parts in the legal process and this includes being expert witnesses in enforcement actions, for example.

EPA should work with CEQ and all agencies affected and with state attorneys general and with public interest litigators to establish a system of training and deploying teams of lawyers, scientists, and researchers capable of enforcing the law and recovering their full costs and expenses and in some cases shares in the recovered funds or fines for the service to society as provided in most of these statutes. The EPA should also work with the Administration and

⁸ Dr. Tyrone Hayes, From Silent Spring to Silent Night: A Tale of Toads and Men, *abstract available at <http://birenheide.com/scb/schedule/sessions.php>*, accessed July 2010.

Congress to seek systemic authority to fill in gaps where enforcement and fee shifting are lacking. (See e.g., the final section of SCB's Obama Transition recommendations, attached.)

SCB trains its members and fellows in policy and enforcement is both the capstone and keystone of policy as science is its cornerstone.

The Society made the following recommendations to the Obama Administration in December of 2008 which EPA should work with CEQ and others to bring about:

Implementation of NEPA would benefit from the following actions by the Council on Environmental Quality (CEQ).

- Issue guidance to all federal agencies on rigorous, scientifically credible analysis of the effects of climate change and the effects of alternative proposed programs, projects, and other actions in mitigating net greenhouse gas emissions and adapting to climate change within the context of NEPA compliance.
- Reestablish NEPA at the programmatic level to facilitate early assessment of impacts and alternatives that can improve the ability of science to inform decision-making.
- Initiate a government-wide review of conflict of interest and ethics policies that pertain to federal agencies' selection of contractors for preparation of environmental impact statements and exclude any contractors that have conflicts of interest, financial or otherwise.
- Review the categorical exclusions of resource management, transportation, and other agencies to ensure that the only proposed federal actions excluded from documented analysis are those that would not, individually or cumulatively, have significant environmental effects.
- Consider expanding the scope of NEPA guidance and expanding cooperation with states to capture earlier in the process actions that eventually will entail Federal actions or support, such as adding sources for interstate electric supplies in order to identify and better control significant sources of greenhouse gas emissions.

Additionally, we recommend that the Administration reexamine NOAA's NEPA procedures to ensure that they involve the fishery management councils created under the Magnuson-Stevens Act while leaving government functions in the control of the agency. We recommend that NOAA be directed to evaluate biological and economic impacts related to changes in biological diversity, alteration of species' habitats, introduction of non-native species, and ecosystem resilience when developing risk assessments, such as when evaluating aquaculture projects. *We also recommend that the administration reevaluate the exclusion of EPA decisions and rulemaking from NEPA review.*

This exclusion is often incompatible with the goals of NEPA and reduces the transparency of government decision-making.⁹ (Emphasis added.)

We appreciate very much the fact that you have sought public comment and look forward to seeing the next version of this plan and working with you to implement it.

Thank you.

John M. Fitzgerald, J.D.

Policy Director

⁹ The Society for Conservation Biology, *Recommendations for Actions by the Obama Administration and the Congress to Advance the Scientific Foundation for Conserving Biological Diversity* at 6 (December 2008).