

Congress of the United States
Washington, DC 20515

October 16, 2009

The Honorable Ken Salazar
Secretary of the Interior
1849 C Street, North West
Washington, D.C. 20240

The Honorable Gary Locke
Secretary, U.S. Department of Commerce
1401 Constitution Avenue, North West
Washington, D.C. 20230

Dear Secretaries Salazar and Locke:

This letter is in regards to your commitment to contract with the National Academy of Sciences (NAS) to conduct an independent scientific review of the two Bay Delta Biological Opinions issued by the U.S. Fish and Wildlife Service (USFWS) in 2008 and the National Marine Fisheries Service (NMFS) in 2009. We understand that the Department of the Interior has asked for comments regarding the independent scientific review by NAS that will address issues set forth in your letter of September 30, 2009. We strongly encourage you to request NAS to complete a three-phase study, as referenced in Senator Feinstein's September 11, 2009 letter to your agencies, and as recommended in a October 15, 2009 letter submitted by the San Luis & Delta-Mendota Water Authority and the State Water Contractors. This three-phase approach, with each phase posing clearly defined tasks, will provide your agencies with the most accurate scientific information available. Phase I will provide the best opportunity of benefits for the Bay-Delta ecosystem and water supply by March, 2009, and Phases II and III will help inform your agencies as they make regulatory and policy decisions in the coming years.

As you are aware, we have long advocated for an independent scientific review of the biological opinions and of the full range of factors that have contributed to the decline of fisheries in the Delta. We are pleased that you have recognized the value of an independent scientific review by NAS, and we want to reiterate our view that it is essential for the review to focus on the scientific assumptions used as the foundation for the two biological opinions. We believe your willingness to seek an independent review of those opinions and the science that underlies them will provide the information necessary to better protect California's salmon, Delta smelt and water supply.

We are concerned, however, that your September 30, 2009 letter to Senator Feinstein appears to indicate that you do not intend to review the science underlying the jeopardy and adverse modification determinations contained in the biological opinions. Instead, your letter focuses on a review of potential changes to the Reasonable and Prudent Alternatives (RPAs) that only are intended to mitigate the jeopardy and adverse modification determinations. Although we appreciate this review and stated goal, we believe the NAS review will be insufficient if it is limited to the RPAs without an examination of the underlying need for those RPAs.

NAS is capable of providing the kind of independent scientific review using proven procedures that have the credibility to be accepted by all stakeholders and serve as a scientific foundation for the Delta for the foreseeable future. However, in seeking the highest quality science available to solve the Delta's problems, we believe it will be essential to bring new scientific thinking to bear on the Delta's problems. You can accomplish this by ensuring that the NAS committee is comprised of eminently qualified scientists that have the benefit of a broad background, and whose experience is not limited to the Delta.

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Our nation's universities and scientific institutions are replete with talented scientists capable of applying their ecological expertise to the Delta. An NAS review led by scientists of national import, and with new scientific ideas is consistent with the independent review, and in our view is preferable to a panel made up primarily of Delta experts who have tried for years to solve the Delta's problems, to no avail.

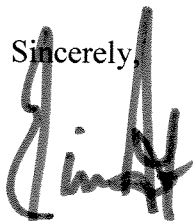
Our greatest fear is that, in spite of increasing environmental restrictions, the Delta's fisheries will continue to collapse. While this is a problem that you have inherited, it is a problem that can only be addressed with a new approach that starts with the NAS review. We are acutely aware that the Delta smelt population is now at about two percent of its level at the time of listing and salmon populations are faring no better. These declines are in spite of the investment of millions of acre-feet of water, billions of dollars from state, federal and local sources, and 17 years of implementation of the Central Valley Project Improvement Act of 1992. A December 2008 review of the CVPIA revealed that scientific, institutional, and programmatic obstacles have impeded the CVPIA from reaching its potential. We believe that an NAS review will address some of the scientific problems identified in that 2008 review.

The failure of past decades of science to recover the Delta fishery must not be continued by a cursory NAS review that does not look at the underlying science. The current approach to conserving the Delta's fisheries has devastated agriculture south of the Delta and compounded water shortages in southern California. Central Valley Project and State Water Project exports from the Delta in 2009 are 2.3 million acre feet less than they were in 1989, despite similar hydrological conditions in both years. This represents a loss of 60% of the California's water supply reliability, due primarily to the federal agencies' focus on reducing pumping – a measure which has not achieved the desired benefits for fish.

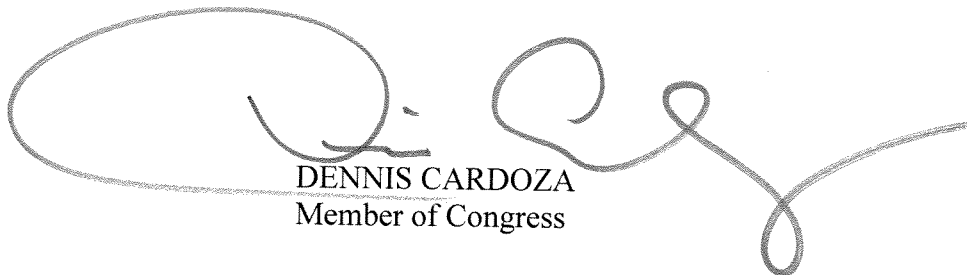
It is time to embrace a new way of managing the Delta based on better science that is capable of recovering the Delta's beleaguered fishery and protecting California's water supply. Again, we urge you to utilize the three-phase approach, as outlined in the attachments, as a way to ensure the difficult and important regulatory decisions are backed by strong science. If the agencies are unwilling have NAS's renowned experts look at the most important questions affecting the future of the Delta and the San Joaquin Valley, it appears to us that such a review would not be worthwhile at this point.

We look forward to hearing from you as to how you plan to proceed. Thank you for your consideration.

Sincerely,



JIM COSTA
Member of Congress



DENNIS CARDOZA
Member of Congress

Attachments (3)

Attachment

NRC Committee Task Statement
Delta Study No. 1
(To be completed within 6 months of funding)

Review and evaluate the scientific information referenced in the U.S. Fish and Wildlife Biological Opinion for delta smelt in the Sacramento-San Joaquin Delta (USFWS, Dec. 15, 2008) and the National Marine Fisheries Service Biological Opinion for various listed species in the Sacramento-San Joaquin river systems (NMFS, June 4, 2009), the interpretation of that information in the agencies' effects analyses, and the extent to which the agencies' effects analyses supports their jeopardy and adverse modification determinations, and reasonable and prudent alternatives. In doing so the committee should address the following questions.

1. Did USFWS/NMFS adopt definitions of habitat that are appropriate in light of the contemporary understanding and use of that concept in the biological sciences? Did USFWS/NMFS apply the concept of habitat to inform their respective evaluations of the status of the listed species, and to determine the environmental baseline and effects of the action?
2. Did USFWS/NMFS utilize available scientific data and analyses to distinguish between the environmental baseline and effects of the action in order to inform the selection of reasonable and prudent alternatives in the Biological Opinions?
3. Did USFWS/NMFS reference and apply the best available data and analyze those data using the appropriate, prevailing statistical techniques to develop the reasonable and prudent alternatives? Have any relevant scientific data and/or analyses become available since USFWS and NMFS prepared the biological opinions that could improve their respective analyses?
4. Taking into account the relevant scientific data and analyses, did USFWS/NMFS consider a reasonable range of alternative actions when developing their reasonable and prudent alternatives and select reasonable and prudent alternatives that are scientifically justified in light of their effects analyses and jeopardy/adverse modifications determinations?
5. Do the reasonable and prudent alternatives in the Biological Opinions create management conflicts among the listed species?

Attachment

NRC Committee Task Statement

Delta Study No. 2

(To be completed 15 months after initiation of the study, using funding in the 2010 Interior Appropriation)

1. Review the scientific information assessing the extent of ecosystem decline in the Sacramento-San Joaquin delta and rivers systems (the Delta system), including the status and trends of pelagic organisms and anadromous fish species.
2. Identify the factors that may have contributed materially to the decline of at-risk species in the Delta system. To the extent practicable, rank the contribution of those factors, in order of their likely impact on the survival and recovery of Delta species for purposes of informing future conservation actions. Describe gaps in available scientific information and uncertainties that constrain the ability to identify those factors.
3. Describe the physical components, food web, species composition, and other essential attributes of the historical Delta system, and how anthropogenic and non-anthropogenic perturbations have influenced those ecosystem attributes. How do those changes limit the ability of resource managers to restore physical and biotic conditions in the system?
4. What level of restoration of the Delta system is attainable? Identify metrics that can be used by resource managers to measure progress toward restoration goals, including recovery of populations of at-risk fish species, and the habitats and ecosystem processes that support those species?
5. To the extent that water flows through the Delta system contribute to ecosystem structure and function, explore flows options that would contribute to sustaining and restoring desired, attainable ecosystem attributes, while providing for urban, industrial, and agricultural uses of tributary, mainstem, and Delta waters.

Attachment

NRC Committee
Delta Study No. 3

(To be completed 18 months after second study, assuming funding is provided)

We envision a third study that will advise water planners and resource managers as to how they can most effectively incorporate science, adaptive management, and decision-support tools into real-time monitoring and water allocation actions to provide for water export deliveries and sustainable Sacramento-San Joaquin delta and rivers systems. We propose to develop a specific task statement closer in time to the commencement of that study that can take into account the information gleaned in the first two studies, emerging findings from ongoing scientific research, and the needs of water planners and resource managers.