



United States Department of State

Bureau of Oceans and International Environmental and Scientific Affairs

Washington, D.C. 20520

RAPIDFAX

Date: 6/25/98

Time: 1502

FAX. No: 395-7294

Pages to follow: 1

!!!URGENT!!!

TO: Mac Reed

Office: OMB

FROM: Peter O. Thomas, Ph.D. TEL. No: 202 736-7113

Office Symbol/Number: OES/ETC Fax No: 736-7351

MESSAGE

Please see attached on
EO on Invasive Alien Species



United States Department of State

*Bureau of Oceans and International
Environmental and Scientific Affairs*

Washington, D.C. 20520

June 25, 1998

TO: Mac Reed - OMB

FROM: Peter O. Thomas - STATE/OES

POA

SUBJECT: Use of the term Alien Species

I understand there may be some question about the appropriateness of the use of the term "Alien" in the Draft Executive Order on "Invasive Alien Species." The term has become the common usage internationally as well as here at home. The following are a few examples of its use internationally.

- 1). The Convention on Biological Diversity (1992) Article 8(h). In-Situ Conservation reads: [Each contracting Party shall, as far as possible and as appropriate:] "Prevent the introduction of, control, or eradicate those alien species which threaten ecosystems, habitats or species." The term has been used in several decisions of the Conference of the Parties to the Convention in the ensuing years.
- 2). Norway hosted a major international meeting on the subject in Trondheim Norway, 1-5 July 1996, entitled "Norway/UN Conference on Alien Species"
- 3). The United States submitted a paper to the Tenth Conference of the Parties to the Convention on International trade in Endangered Species of Wild Fauna and Flora which recognized that "alien (non-indigenous) species are second only to habitat loss as a threat to the world's biodiversity.
- 4) A National Geographic book (1998) authored by Robert Devine, is "Alien Invasion." The term "Alien Species" is used by Bruce Babbitt his forward.
- 5). American Heritage dictionary defines alien as follows: "*Ecology.* A plant native to one region but naturalized in another."

Thank you for your work on this important Executive Order.



United States Department of State

Washington, D.C. 20520

OFFICE OF LEGISLATIVE AFFAIRS (H)

LEGISLATIVE REFERENCE UNIT

Telephone # (202) 647-4463

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COMMENTS: on Exec. Order "Invasive
Alien Species"

June 23, 1998

Comments on Invasive Species Draft Executive Order

Section 1: Definitions:

The definition of Invasive alien species in (e) should be rephrased to read: "means an alien species that does or could harm the economy or ecology of the United States and/or the health of its inhabitants."

Section 2. CHAPEAU: The phrase "as appropriate" should be inserted in the chapeau paragraph on Federal Agency so that the third clause reads, "and, as appropriate, in cooperation with States, Tribes, and local governments."

Rationale: Federal agencies do not have to consult with tribes, states, and local governments to cooperate internationally as in (h). While this is often good practice, the specific reference to domestic consultations really applies to domestic and not international activities which are the province of the federal government.

Section 2 Delete subpara. (g).

Rationale: This does not follow the form of the other subparagraphs and is circular. It also raises questions on the appropriate reach of the federal government on this issue which merit consideration under the "Invasive Species Council." The following expansion of subpara. (h) will maintain the concept.

Modify Subpara. (h) as follows:

"(h) in consultation with the Secretary of State, pursuing international cooperation in addressing invasive alien species, with particular attention to reducing the risk of introductions of alien species that are or could become

invasive into the U.S. and considering means to reduce the risk of U.S. species becoming invasive species in other countries."

Rationale: First phrase: The EO should not give each agency the mandate to pursue international cooperation independently; our international approach must be coordinated to be effective. Overall this reformulation makes clear the primary purpose of international cooperation under the proposed Executive Order, which is to reduce the risk of introductions into the U.S. and it raises the question of our role in ensuring other countries are not subject to invasions from the U.S.

Section 3, subpara. (b) Delete "and implement"

Rationale: We question whether the Invasive Species Council is the body to implement the Management Plan. The Federal Agencies will implement. The Council might be charged with guiding or monitoring the implementation.



OFFICE OF LEGISLATIVE AFFAIRS (H)

LEGISLATIVE REFERENCE UNIT

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COMMENTS: Additional Comments on Exec. Order
Alsea Species



June 23, 1998

SUBJECT: Executive Order Regarding Invasive Alien Species

– Section 1(b), definition of “Control” in the last line change “and” to “and/or” to clarify that control may be all or some of the enumerated activities.

– Section 1(e), definition of “Invasive Alien Species” should be modified as follows:

“Invasive Alien Species” means an alien species that does or could harm the economy the ecology of the United States, United States economies dependent on that ecology, or human health of in the United States, if introduced.

Explanation: The above change clarifies that the Executive Order concerns itself with economic impacts which derive from environmental impacts rather than with economic impacts unrelated to environmental impacts. This modified language is similar to the language of the Aquatic Nuisance Prevention and Control Act of 1990, 16 U.S.C. Section 4702(1), which defines an aquatic nuisance species as a “nonindigenous species that threatens the diversity or abundance of native species or the ecological stability of infested waters, or commercial, agricultural, aquacultural or recreational activities dependent on such waters.” (Emphasis added)

– Section 2, paragraph (h) should be separated into its own paragraph to read:

“Federal agencies shall, to the extent permitted by law and through existing interagency procedures, prevent the introduction and spread of invasive alien species into ecosystems and control them by pursuing international cooperation in addressing invasive alien species.”

In the alternative, the chapeau sentence of Section 2 could be revised, creating a broader effect, as follows:

“Federal agencies shall, to the extent permitted by law and through existing interagency procedures, and in cooperation with States, Tribes, and local governments, as appropriate, prevent the introduction and spread of invasive alien species into ecosystems and control them by:”

Explanation: While often done, Federal agencies do not always cooperate with States, Tribes and local governments in the pursuit of international cooperation. Such local cooperation is not always appropriate, and the Executive Order should not compel it. Moreover, the Executive Order should make clear that the Order does not intend agencies to deviate from the usual interagency procedures in pursuing such cooperation.

Note: Paragraphs (c) and (g) concerning exports and the reduction of the risk of U.S. species becoming invasive species in other countries, respectively, could raise similar concerns, though not of the same magnitude. The Department of State, therefore, does not feel strongly about these paragraphs.

cc: OES/ETC - MMcLeod, RChew

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF SCIENCE AND TECHNOLOGY POLICY
ENVIRONMENT DIVISION
WASHINGTON, DC 20502

DATE: June 23, 1998

TO: Robert Damus
c/o Mac Reed
fax: 57294

FROM: Donald Pryor, OSTP
(ph: 202-456-6135; fax: 202-456-6025;
email: dpryor@ostp.eop.gov)

SUBJECT: Invasive Alien Species E.O. draft

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF SCIENCE AND TECHNOLOGY POLICY
WASHINGTON, D.C. 20502

June 23, 1998

MEMORANDUM FOR: Robert G. Davis
General Counsel, OMB

FROM: Arthur Biencenstock *A. Biencenstock*
Associate Director for Science, OSTP

SUBJECT: Proposed Executive Order on "Invasive Alien Species"

We endorse the goals and direction of the proposed executive order. The following suggestions are offered as improvements:

Section 1. Definitions

Paragraph (a): What is meant by "viable biological material derived from a species"? Is a cell line derived from an alien species considered an alien species? The definition should be made more precise -- it should be changed to read as follows:

"Alien species" means, with respect to a particular ecosystem, any species, including its seeds, eggs, spores, or other biological materials capable of propagating that species, that is not native to that ecosystem."

Paragraph (b): "adapting human activities and public facilities to accommodate infestations" should not be listed as control -- since it isn't.

Paragraph (d): This definition is too imprecise. Introduction into an ecosystem through intentional release or unintentional escape should be the focus of the executive order. If an alien species is transported in an uncontained manner (e.g. in a ship's ballast or bilge water) it should be considered an escape. Transportation does not necessarily result in an introduction. For example, transportation, importation and use under quarantine conditions should not be covered by this executive order, since those actions do not result in an introduction into an uncontained "ecosystem". Establishment is not introduction -- it's what can happen after an introduction occurs. The definition should be changed to read as follows:

"Introduction" means the intentional release or unintentional escape of an alien species into an ecosystem as a result of human activity."

Section 2. Federal Agency Duties

Paragraph (b): Change the placement of commas so that the clause reads as follows:

"ensuring rapid detection and monitoring of changes in the distribution of invasive alien species; and, when warranted, controlling them in a manner that avoids ~~to~~ minimizes harm to non-target organisms and ecosystems;"

Section 3. National Invasive Alien Species Council

Paragraph (a): A federal advisory committee, formally recognized under FACA, probably cannot be established as "a subcommittee" -- it should be referred as "an advisory committee" to the council. Also, its functions should be advisory, rather than "to advance issues and actions". This clause should be changed to read as follows:

"establish an advisory committee under the Federal Advisory Committee Act consisting of representatives from State, Tribal, and local government agencies, academic institutions, the scientific community, non-governmental entities including environmental and conservation organizations, and commercial interests to provide recommendations for consideration by the Invasive Species Council;"

Paragraph (e): This needs to be reworded. It sounds like we need to establish web-based information systems "for" invasive species -- it should say "on" invasive alien species. The clause should be changed to read as follows:

"develop and establish a coordinated web-based network of information on invasive alien species;"

Paragraph (h): Add "research results" -- the clause should read as follows:

"share the latest research results, resource information, and management technologies to assist in the prevention and control of invasive alien species."

Section 4. National Invasive Alien Species Management Plan

Introductory paragraph: The end of the second to the last line should be changed to read as follows:

"...performance-oriented goals to prevent their introduction and control them once introduced or established."

Paragraph (a): Add "identify research needs" before "and recommend measures required to reduce the risk of introductions occurring."

Paragraph (c): A massive monitoring effort of most animal, human and plant pathogens and weeds would be needed to "ensure" detection. This clause should be changed to read as follows: "ensure that monitoring is designed on the basis of risk to detect the presence of alien species and changes in their distribution;"

Paragraph (f): Economic impacts should be explicitly mentioned along with "ecological, human health, and other impacts".

Closing paragraph: These two sentences should be incorporated in the introductory paragraph rather than fragment the description of the Management Plan.

Section 5. Regional Coordination

Introductory paragraph: Change "... implementing applicable goals and objectives ..." to "... implementing steps to achieve the goals and outcomes ..."

Section 8. Termination (new)

This executive order should have a termination date (say five years) or some form of overall assessment of its effectiveness that may or may not lead to its termination.

If you have questions about these comments or related issues, please contact Cliff Gabriel (66127) in the Science Division or Don Pryor (66135) in the Environment Division.



DEPARTMENT OF THE TREASURY
WASHINGTON

OFFICE OF THE ASSOCIATE GENERAL COUNSEL
(LEGISLATION, LITIGATION & REGULATION)

1500 PENNSYLVANIA AVENUE, N.W.
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DATE: June 24, 1998

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TO: Mac Reed

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TO: _____

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FAX: _____

FROM: Karen Dorsey

SUBJECT: Draft Executive Order: Invasive Alien Species

COMMENTS/SPECIAL INSTRUCTIONS

We don't object to the draft Executive Order,
but suggest a new title!

June 23, 199

Note to Mac Reed, OMB, Fax 395-7294

From Jim Nelson, EPA/OGC (phone 260-5340, fax 260-8392)

Re: EPA comments on draft Executive Order on Invasive Alien Species

Here are EPA's comments on the draft Executive Order on Invasive Alien Species. There are two documents attached—a cover memo and an attachment showing EPA's recommended changes with explanatory material. Please feel free to call me if you have any questions (260-5340).

9 pages (including this cover sheet)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 23 1998

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: EPA Comments on May 22, 1998, Draft of Executive Order on "Invasive Alien Species"

FROM: Robert Dreher *for*
Deputy General Counsel (2310)

TO: Robert G. Damus
General Counsel
Office of Management and Budget

On behalf of the Environmental Protection Agency (EPA), I am providing comments on the May 22, 1998, draft of an Executive Order on "Invasive Alien Species" which came from your office for review on June 16. EPA has worked with the Department of Interior and other agencies in the process of drafting this Order. We appreciate the opportunity to provide comments.

We have three general comments about the Order discussed in this memorandum and additional comments reflected in the attached document which shows our recommended changes by highlighting new language in bold and language to be removed in ~~strikeout~~ and by providing explanations in *italics*.

Our first comment goes to the terminology used in the draft Order. A number of reviewers here at EPA had a similar reaction to the use of the phrase "invasive alien species" as the key term in the Order. We are concerned that use of this phrase in the Order will conjure up images of the "X Files" and other Hollywood fare and will invite humorous or derisive commentary on the Order. That sort of reaction could significantly undercut the very important message intended to be sent by this Order and the very important public health and environmental issues that are at stake. For this reason, we recommend choosing a different term -- "non-native" -- instead of "alien." (The term "native species" is used in the draft Order, so "non-native species" seems to be an appropriate parallel. The term "exotic species" is used in E.O. 11987.)

Second, President Carter issued Executive Order 11987 on May 24, 1977. The draft Order would cover the same territory as E.O. 11987, but would also significantly expand on it. As far as we can determine, E.O. 11987 was never revoked. Because of the significant overlap between the proposed new Order and E.O. 11987, we recommend that the new Order revoke E.O. 11987. (Since the new Order builds on the ideas in E.O. 11987, appropriate acknowledgment could be given to E.O. 11987 in the statement that accompanies the signing of the new Order.) This action would be consistent with other Orders issued recently that have explicitly revoked prior Orders on the same topic (see for example E.O. 13083 on "Federalism").

Third, under the Federal Advisory Committee Act (FACA), only the President or Federal agencies can establish an advisory committee, not a Council such as is suggested in section 3(a) of the draft Order. EPA supports the idea of an advisory committee on invasive species issues. There are two options available for the Order to establish such a committee appropriately under FACA. One would be for the President to establish the advisory committee in a separate provision of this Order as a Presidential Advisory Committee and to have a specific Federal agency made responsible for supporting and administering the committee. The second option is to have the Order direct a specific agency to establish the advisory committee to perform advisory functions for the agencies represented on the Invasive Species Council. The first option would provide more flexibility since a Presidentially-established advisory committee has fewer limits, but the President may not wish to give the advisory committee such a high profile. Accordingly, our recommended changes reflect the second option.

Our other recommended changes are reflected in the attached document and are explained there.

Thank you for considering these comments. If you have any questions or would like to discuss our comments, please call Jim Nelson at (202) 260-5340.

Attachment

**EPA'S RECOMMENDED CHANGES TO MAY 22 DRAFT EXECUTIVE ORDER
ON "INVASIVE ALIEN SPECIES"**

[Recommended changes are shown by using bold for new wording and using strikethrough to show deletions. Explanations of changes are in italics.]

[Amend title of order to read "Invasive Non-native Species" for the reasons discussed in the cover memo.]

Section 1. Definitions.

(a) ~~"Alien species"~~ **"Non-native species"** means, with respect to a particular ecosystem, any species, or viable biological material derived from a species, that is not a native species in that ecosystem. *[See cover memo concerning use of "non-native". "Non-native" would be substituted for "alien" throughout the Order.]*

(b) **"Control"** means eradication of infestations, reductions of populations, adapting human activities and public facilities to accommodate infestations, preventing spread from infested areas, and conducting restoration activities to reduce the effects of invasive non-native species, and to prevent further invasions.

(c) * * *

(d) **"Introduction"** means the intentional or unintentional transportation, establishment, release, or escape or of an alien ~~a non-native~~ species into an ecosystem, as a result of human activity.

(e) ~~"Invasive alien non-native species"~~ **"Invasive non-native species"** means an alien ~~a non-native~~ species that does or could harm the economy, ecology, environment, or human health of the United States if introduced. *["Ecology" is a field of study; "environment" is the appropriate term for use in this trilogy.]*

(f) **"Native species"** means, with respect to a particular ecosystem, a species that, other than as a result of an introduction, historically occurred or presently currently occurs in that ecosystem; ~~other than as a result of an introduction.~~

[This change makes clear that the phrase "other than as a result of an introduction" is read to modify both "historically occurred" and "presently occurs". An invasive species might have occurred historically as a result of a prior introduction and been eradicated. We want to make sure it isn't treated as a "native" if someone wants to bring it back. "Currently" seems better than "presently" since "presently" can have a sort of look-to-the-future connotation.]

(g) * * *

(h) **"United States"** means all the 50 States, the District of Columbia, Puerto Rico, Guam, and all possessions and territories, including waters of the United States and the territorial sea. *[Because of the concern about the serious effects of introduction of invasive species, it is important to make clear that the term "United States" includes all waters of the United States*

and the 12-mile territorial sea proclaimed by President Reagan (Proclamation Number 5928, December 27, 1988). Introductions of non-native species into the territorial sea could have the same adverse impacts as introductions on land.]

Section 2. Federal Agency Duties. Federal agencies shall, to the extent permitted by law, and in cooperation with States, Tribes, and local governments, and, when appropriate, with non-governmental organizations, prevent the introduction and spread of invasive-~~alien~~ non-native species into ecosystems and control them by:

[There are a number of situations in which Federal agencies would work with non-governmental partners (business, conservation organizations, etc.) to prevent the introduction and spread of invasive non-native species. The Order should acknowledge this active partnership as well.]

(a) reducing the risk of introductions of ~~alien~~ non-native species * * *

(b) ensuring rapid detection and monitoring of changes in the distribution of invasive-~~alien~~ non-native species; and when warranted, controlling them, in a manner that avoids or minimizes harm to non-target organisms and ecosystems to the extent practicable after weighing the health, environmental, and economic impacts of control options against the risk from the invasive non-native species;

[This addition would acknowledge that there are situations where the risk of harm from the introduced invasive non-native species outweighs the harm to non-target organisms and ecosystems, thus justifying harm to non-target organisms. This language would require consideration of health, environmental, and economic impacts of control options weighed against the risks to the economy, environment, and health from the invasive species.]

(c) ~~restricting~~ prohibiting the use of Federal funds, programs, or authorities ~~used~~

(1) to introduce into ecosystems within the United States invasive-~~alien~~ non-native species unless the potential benefits of such introduction clearly outweigh the potential adverse impacts (and measures are taken to control the introduced species, as appropriate); and

(2) to export ~~native~~-species for the purpose of introducing such species into ecosystems outside the United States where they are not native and could become invasive without the prior informed consent of the importing country;

[Given the importance of this provision, the term "prohibiting" sends a stronger message about the seriousness involved than "restricting" which implies limits that are not absolute. Addition of "clearly" would emphasize that there must be a strong showing that the potential benefits outweigh the adverse impacts before an invasive non-native species is allowed to be introduced. The addition of "(and measures are taken to control the introduced species, as appropriate)" would make clear that the decision to allow introduction of an invasive non-native species, even where the benefits clearly outweigh the adverse impacts, has ongoing consequences and that agencies must consider what further steps should be taken to prevent further spread or introduction. Deletion of the word "native" in the export clause, would make clear that export

of native or non-native species from the U.S. should be restricted; otherwise species that are not native to the U.S. and which are invasive could be freely exported. The addition of "without the prior informed consent of the importing country" serves two purposes. First, without this phrase, no exports from the U.S. of potentially invasive species that would not be native to the importing country could take place, even if the importing country wanted the export of the species. Second, the U.S. has taken the position on a number of international health and environmental issues that the concept of prior informed consent is an appropriate restriction on exports of potential hazardous materials. This clause would allow the importing country to decide whether it wishes to receive from the U.S. a potentially invasive species that is not native to that country.]

(d) developing and implementing agency-specific actions that prevent the introduction; and spread of, and provide for the control of, invasive-~~alien~~ non-native species, including at United States installations located in other countries;

[There may be situations where non-native species are first introduced at U.S. installations abroad and then inadvertently brought into the United States. For example, some believe that the brown tree snake may have moved from island to island in the Pacific on U.S. military transport. Thus it is important for agencies with installations abroad to work to prevent the spread of invasive non-native species at those installations.]

(e) encouraging and facilitating efforts to inform and educate a wide range of audiences about potential problems associated with the introduction and spread of invasive-~~alien~~ non-native species * * *

(f) ensuring the coordinated application of existing Federal agency capabilities to address invasive non-native species;

[This explains what the agency "capabilities" are.]

(g) reducing the risk of U.S. species becoming invasive species in other countries; ~~and~~

(h) pursuing international cooperation in addressing invasive-~~alien~~ non-native species; and

(i) encouraging the use and promotion of native species as an alternative invasive non-native species to prevent them from spreading and to encourage the growth and regeneration of native ecosystems.

[For the many agencies that are in a position to do so, encouraging use and promotion of native species can be an effective means of replacing use of invasive non-native species and preventing further spread and introductions.]

Section 3. National Invasive-~~Alien~~ Non-native Species Council. A National Invasive-~~Alien~~ Non-native Species Council ("Invasive Species Council") of Federal agency representatives is hereby established to provide National leadership regarding invasive-~~alien~~ non-native species, ensure ongoing coordination of Federal activities concerning invasive-~~alien~~ non-native species, and

ensure full implementation of the requirements of this order. The Invasive Species Council will consist of, but not be limited to, the Departments of Interior, Commerce, Agriculture, Defense, State, Transportation, and Treasury; and the Environmental Protection Agency and be co-chaired by the Secretaries of Interior, Commerce, and Agriculture. Membership will include one representative from each Federal bureau or office having responsibility for, involvement with, or affected by invasive-~~alien~~ non-native species. An Executive Director, agreed upon by the co-chairs, will be appointed, and required necessary staffing and funding will be provided by the membership member agencies, to the extent permitted by law, as appropriate. The Invasive Species Council shall, acting by consensus:

[The word "necessary" better describes the need for staffing and funding and does not carry the implication that agencies are required to provide it. Funds are provided by "member agencies" not the "membership." Addition of "to the extent permitted by law" ensures that agencies only provide staff or funding when they have the legal authority to do so. It is important to state that the Council will act "by consensus" because of the possibility that some agencies will have multiple representatives on the Council and, thus, could have disproportionate voting power. Since the membership will include "one representative from each Federal bureau or office having responsibility for, involvement with, or affected by" invasive non-native species, we can envision some agencies having several different offices and bureaus with representatives on the Council. In a sensitive area such as this, it is important that all the agencies agree together on actions.]

~~(a) establish a subcommittee under the Federal Advisory Committee Act consisting of representatives from State, Tribal and local government agencies, academic institutions, the scientific community, non-governmental entities including environmental and conservation organizations, and commercial interests to advance issues and actions and provide recommendations for consideration by the Invasive Species Council;~~
[See cover memo concerning FACA issues and new section 6 below.]
[editorial note--some items in the list in section 3 end in "." some end in ";"--need to be consistent.]

~~(b)(a) develop and implement the National Invasive-Alien Non-native Species Management Plan ("Management Plan") identified in section 4, and, after its completion, assess and report annually on the success in achieving its goals and objectives; provide the report to the Office of Management and Budget for consideration in the budget process; and update the Management Plan after each report.~~

[The Council will not "implement" the Management Plan; the agencies will.]

~~(c)(b) ensure that the activities of the Invasive Species Council will be coordinated with and not duplicate the existing programs, authorities, and activities of on-going government and non-government activities addressing invasive-~~alien~~ non-native species * * *~~

~~(d)(c) ensure that programs, research, and other activities among Federal agencies involved in the prevention, monitoring, and control of invasive-~~alien~~ non-native species * * *~~

(e)(d) develop and establish a coordinated ~~web-based~~ Internet-based information network ~~for to~~ address invasive ~~alien non-native~~ species issues;

["web-based" is less clear than "Internet-based." Also the network will "address" invasive species "issues" - it is not "for" the species.]

(f)(e) provide ongoing coordination for relevant Federal regulatory activity as appropriate, including, but not limited to, the development and implementation of guidance, in consultation with the Council on Environmental Quality, for addressing invasive ~~alien non-native~~ species * * *

(g)(f) encourage the development of regional approaches for addressing invasive ~~alien non-native~~ species * * *

(h)(g) share the latest resource information and management technologies to assist in the prevention and control of invasive ~~alien non-native~~ species;

Section 4. National Invasive ~~Alien Non-native~~ Species Management Plan. Within eighteen months of the date of this order, the Invasive Species Council, utilizing a public process and in consultation with other Federal agencies, Sstate, Ttribal, and local governments, academic institutions, the scientific community, non-governmental entities including environmental and conservation organizations, commercial interests, and other stakeholders, shall prepare a National Invasive ~~Alien Non-native~~ Species Management Plan that addresses Federal efforts related to invasive ~~alien non-native~~ species * * *

(a) review existing and potential new approaches and authorities for preventing introduction of invasive ~~alien non-native~~ species, including those for identifying pathways by which invasive ~~alien non-native~~ species * * *

(b) establish a science-based process to evaluate all ~~alien non-native~~ species introductions for risks posed and a coordinated and systematic risk-based process to identify, monitor, and interdict pathways that may be involved in the introduction of invasive ~~alien non-native~~ species;

(c) ensure that the presence of invasive ~~alien non-native~~ species * * *

(d) identify the measures to control established invasive ~~alien non-native~~ species * * *

(e) * * *

(f) develop a process to document the ecological, environmental, human health, and other impacts from invasive ~~alien non-native~~ species * * *

[same reason as change in section 1(e) above.]

(g) identify ~~develop~~ a comprehensive approach for gaining international cooperation in addressing invasive ~~alien non-native~~ species.

(h) develop a national emergency response strategy for new introductions of invasive non-native species.

[The idea of emergency response capability is addressed in section 5 with respect to Regional Coordination; it should also be addressed as part of the Management Plan.]

Section 5. Regional Coordination. The Invasive Species Council, in cooperation with State, Tribal, and local, ~~and Tribal~~ governments and established invasive-~~alien~~ non-native species programs and groups shall encourage the development of regional entities to address invasive ~~alien~~ non-native species issues * * *

(a) identifying regional priorities with respect to invasive-~~alien~~ non-native species * * *

(b) * * *

(c) coordinating, where possible, on-going regional programs and activities addressing invasive ~~alien~~ non-native species;

(d) developing an emergency response strategy for new invasive-~~alien~~ non-native species in the region; and

(e) providing advice to the public and private entities concerning methods of preventing and controlling invasive-~~alien~~ non-native species.

Section 6. Invasive Non-native Species Advisory Committee. The Secretary of *[Interior, Commerce, or Agriculture—select one]*, as co-chair of the Invasive Species Council, shall establish an Invasive Species Advisory Committee under the Federal Advisory Committee Act consisting of representatives from State, Tribal, and local government agencies, academic institutions, the scientific community, non-governmental entities including environmental and conservation organizations, and commercial interests to provide advice and recommendations for consideration by the Federal agencies represented on the Invasive Species Council. The Secretary shall consult with the other members of the Invasive Species Council in selecting members of the Advisory Committee. The Secretary shall support the Advisory Committee administratively and financially.

~~Section 6. Judicial Review.~~ **Section 7. General Provisions.** (a) This order is intended only to improve the internal management of the Executive Branch and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any other person.

(b) Executive Order 11987 of May 24, 1977 is revoked.

Office of General Counsel

U.S. Department of Transportation

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TO: Mac Reed

FROM: Jane DeCell

202-366-9299

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Number of pages (including this page)	9
DATE AND TIME	6/23/98 - 5:00pm
DATE COMMENTS / RESPONSE (IF ANY) ARE DUE	Per Ack message

Remarks:

Please let me know if you want a GC letter.

Jane

Draft letter on alien invasive species EO

The Department of Transportation has reviewed the proposed executive order on Invasive Alien Species. The Department supports the objectives of reducing the risk of introduction and spread of alien species embodied in the proposed executive order, and participated on the working group responsible for drafting. The Coast Guard has responsibilities under several statutes to address invasive aquatic species. The Federal Highway Administration has interest in assisting states in controlling spread of nonnative species and noxious weeds along highway rights of way. However, we have identified several concerns with the order's broad imposition of duties on Federal agencies. We believe these concerns should be addressed before the executive order is signed.

The term "alien" should not be used in the document. We recommend either using the word, "Nonnative" as a replacement or simply just dropping the word, "alien" from the title and text.

Paragraph 3 of the order would establish a National Invasive Alien Species Council. One of the responsibilities of the Council would be to develop a national invasive species management plan that addresses Federal efforts related to invasive alien species and establishes outcomes and goals for preventing introduction of alien invasive species and for their control (paragraph 4). The order stipulates, in paragraph 2, Federal agency duties to prevent the introduction and spread of alien invasive species. These duties appear to be effective immediately upon issuance of the order. If these duties are imposed on Federal agencies before a management plan is developed, agencies may undertake uncoordinated, ineffective and possibly unnecessary or conflicting measures. Because there is no clear list of covered species, different agencies might identify different species as invasive. Further, the language in Section (c) could require agencies in some cases to take certain actions absent any Federal statute requiring them to do so. Many Federal programs have very specific eligibility requirements mandated by Congress which may not address the introduction of invasive species. Under these programs, Federal agencies generally would not (or could not) unilaterally deny funds if all requirements stated in the law have otherwise been met by the recipient.

Paragraph 2.c. could be particularly burdensome if it is interpreted to require agencies to restrict Federal funds, programs and authorities if they might unintentionally result in introduction of a covered species. We strongly recommend that agencies be required to restrict only those programs, funds or authorities which intentionally introduce covered species. A far more effective approach would be to impose duties on agencies upon completion of the plan, including listing of species. Restrictions on Federal actions should only apply after a list of species is adopted. Duties cited in section 2 should follow discussion of the invasive species plan.

Further, paragraph 2 appears to impose requirements equally on land management agencies and agencies whose programs may indirectly enable introduction and spread of alien invasive species. We believe it would be helpful to distinguish between these two roles in imposing requirements on agencies.

We believe that prior to completion of the plan, agencies should examine their authorities to determine what measures they can undertake, and look at programs which may involve vulnerabilities. We recommend that instead of section 2, a section should be added which encourages agencies to take actions within their authorities to prevent the unintentional introduction and control the spread of species. Agencies might also use the NEPA process to identify appropriate mitigation for actions which are likely to result in introduction of nonnative

invasive species.

Detailed comments are provided in an attachment.

Attachment

Detailed comments, Draft of Invasive Alien Species Executive Order

The terms "invasive alien species" and "native species" contain elements that are vague and likely subject to any number of interpretations. For example, an invasive alien species becomes "invasive" if it could or does harm the economy, ecology or human health of the U.S. Harm to the economy, ecology and human health are all questions of degree. How do you measure harm to the economy? What is the "U.S. ecology" and how do you determine when it is harmed? Harm to human health may be more definite, but the measurement of effects is not always clear.

Similar questions apply to the native species definition. If a "native species" can be one that currently occurs in an ecosystem other than the result of an introduction, we believe there is the possibility that a non-native species introduced into the U.S. many years ago could be considered native. An example would be a species introduced into one part of the country that propagates on its own into other ecosystems. Since it may now occur in other ecosystems not through introduction, it could be considered native under the definition.

If retained in the EO, these definitions will likely require an extensive guidance document to prevent misinterpretation and misuse of the terminology.

Introduction. The last sentence of the introduction states that a purpose of the EO is to eliminate or minimize ... human health impacts. As separate authorities enable the Centers for Disease Control to address disease, we suggest a clarification to the EO which notes that preventing the introduction and spread of disease from outside the U.S. is not covered. The term "human environment" may be less confusing.

Section 1. Definitions

Subsection (a), it is not clear what "viable biological material" is intended to cover. We recommend that this be clarified.

Subsection (b), to clarify that not all means of "control" apply in a specific instance, we suggest that the paragraph read, "Control" means, *as appropriate, ...*

Subsection (e), suggest also defining "nonnative invasive species" to apply to species not native to ecosystems which could be harmful if introduced. We also suggest that the definition of invasive alien species be revised to read, "an alien species that does or *is likely to* harm the economy or ecosystems if introduced.

Section 2. Federal Agency Duties. As noted in DOT comments, we believe that Section 2 needs to be restructured to address duties that follow the National Invasive Species Plan and to place different responsibilities for various degrees of Federal control over actions. Rather than "Federal agencies shall, to the extent permitted by law," we recommend that section 2 read, "*Federal agencies shall use their authorities, in cooperation with States, Tribe and local*

governments, *to seek to prevent* the introduction and spread..."

We recommend edits to clarify the uncertainty of introduction of species and the limited control most agencies have over actions.

Subsection (a), reword as "*alien and nonnative species that are or are likely to become invasive...*"

Subsection (b), reword as "*taking appropriate action to ensure ...*"

Subsection (c), reword as "*restricting the use of Federal funds to intentionally introduce into ecosystems within the U.S. invasive alien and nonnative species.*"

Add a new subsection that reads, "*encouraging grantees and permittees to take actions within their authorities that prevent introduction and spread, and provide control of invasive alien and nonnative species.*"

Subsection (g), reword to read, "*seeking to ensure ...*"

Section 3, Council.

Subsection (a), the order should direct a specific agency to be responsible for the Federal Advisory Committee Act subcommittee.

Subsection (c), we recommend that in order to ensure continuation of current efforts, the subsection be revised to read "...coordinate with and not duplicate *or diminish* existing programs and activities..."



U.S. Department
of Transportation
Federal Aviation
Administration

Memorandum

Subject: Executive Order 45

Date: June 23, 1998

From: Mary U. Walsh *myw for*
Assistant Chief Counsel for Legislation

Reply to: Victoria Wei
Attn. of: ext:73217
fax:75194

To: Jane DeCell

The FAA has the following comments and suggested revisions to Executive Order 45:

A transmittal memo or the text of the EO itself should clarify how this EO relates to the May 24, 1977 EO 11987 on introduction and export of Exotic Organisms. The proposed EO appears to incorporate several elements of the 1977 EO. For example, both refer to the purposes of NEPA and the Lacey Act in the authorities section.

The FAA recommends that the President sign this EO only if sufficient agency staffing and resources necessary to run the Council and develop the Plan have been estimated and a plan developed to assure that it is feasible under current fiscal constraints, particularly for Department of Transportation. Alternatively, the FAA recommends lengthening or providing for an extension as necessary of the 18 month time period for development of the plan to realistically reflect available resources and mandatory competing environmental duties and responsibilities, such as the recent EO on Environmental Justice.

The FAA assumes that the Federal Advisory Committee will be funded using appropriations other than those of the Council members. It is our understanding that, due to budgetary constraints, the Department of Transportation is not funding creation of additional advisory committees.

Section 1, (d): the phrase "escape or of an alien species" is not grammatically correct and indicates an omission. Delete "or" or insert the missing word.

Section 1, (e): "invasive alien species": The proposed definition should recognize the ability of a species to reproduce or outcompete native species. In many cases, it is the invasive species' ability to overtake native populations due to superior reproductive capabilities (e.g., kudzu weed) or the lack of predators (e.g., brown tree snake). While many alien species can be imported to an area without decimating native populations

(e.g., cultured roses), other flora or fauna brought into a new locale, will overtake native species or lack of predators. Such traits allow invasive species to substantially alter the composition of native communities. As a result, the invasive species becomes the dominant species at the cost of others that cannot compete with it. The FAA suggests that the section read as follows:

"...alien species that does or could significantly harm the economy, ecology, or human health of the United States if introduced, including but not limited to its ability to adapt to new environments, because it is capable of reproducing quickly and unchecked, or due to a lack of predators or other competitors."

Section 2: The legal authorities cited in Section 1 do not encompass the full scope of actions required by Federal agencies to act in these kinds of situations. The FAA suggests the following alternatives:

1) The legal authorities cited in Section 1 do not appear to support affirmative actions by all agencies of the Federal Government to protect biodiversity of all (not just endangered) species and to prevent unintentional transportation of invasive alien species (not just release or escape). In the case of the Department of Transportation, the EO also appears to contemplate actions to achieve the purposes of the National Environmental Policy Act of 1969 that are independent of any proposed federal actions. It may be useful to clarify the EO on this point.

This section could be eliminated and a shorter list of duties could be incorporated into the list of actions to be taken by the Council. As to members of the Council, Section 2 duplicates responsibilities under Section 4 to implement measures in the Management Plan within 36 months. Non-Council member agencies could be directed to review their procedures to determine how they could implement the EO, as done to implement the EO on Environmental Justice.

2) The mandatory duties that appear to exceed statutory authority for most Federal agencies, (all but (c) and (h)), could be rephrased as aspirations and (c) could be revised to address only "intentional" introductions.

3) The EO can be revised to focus on intentional introductions and on federal actions and federally owned, leased, or held lands. The 1977 EO requires executive agencies to the extent permitted by law, to restrict the introduction of exotic species into the natural ecosystems on lands and waters which they own, lease, or hold and requires executive agencies to the extent permitted by law, to restrict the use of Federal funds, programs, or authorities used to export native species for the purpose of introducing such species into ecosystems outside the United States where they do not naturally occur. Introduction is defined as release, escape, or establishment.

4) To trigger compliance with many environmental laws, orders, or regulations, many Federal agencies must undertake a Federal action. To recognize this fact, we suggest the following revision to this lead in paragraph:

"Before authorizing funding or approving programs or issuing authorizations, each Federal agency, shall, when appropriate:"

- (a) determine if the proposed Federal action increases the probability of spreading known invasive alien species from one location to another within the United States or if the action will enable alien species to become invasive;
- (b) require measures designed to rapidly detect and monitor action-induced changes in the distribution patterns of any known invasive alien species or any alien species that would become invasive due to the proposed action;
- (c) require measures to control invasive alien species in a manner that will minimize harm to non-target organisms or ecosystems;
- (d) ensure that the action will not intentionally introduce invasive alien species into ecosystems within the United States, unless....and could become invasive;
- (e) encourage and facilitate efforts to inform and educate....control them;
- (f) ensure the coordinated....agency capabilities;
- (g) reduce the risk of...in other countries; and
- (h) pursue international...alien species."

We recommend deleting item (d) as written on pg. 2 since it is included in revised item (c).

5) Section 2(c) of the LIO should be revised to clarify how the benefits of introductions are to be determined to outweigh the potential adverse effects of introducing an alien species into ecosystems in the US and which agencies are responsible for making that evaluation. (Under the 1977 EO, DOI or USDA has authority to determine that introduction or exportation would not have an adverse effect on a natural ecosystem. If they make that determination, then the 1977 EO does not apply). Consider using the term "potentially significant adverse effects."

Section 3, (e): The FAA suggests the following revision to ensure that the web-based site contains the most current information on known invasive species:

"(e) establish, develop, and maintain a coordinated up-to-date web-based information...species;"

Section 3 should also clarify that the plan will establish priorities for addressing invasive alien species taking into account the pristine nature of the environment, the degree of risk of harm to the ecosystem, and any other pertinent factors.

Section 4: The FAA suggests the following revisions:

Revise the third line of item (a) in this section to include the phrase:

"(a) review existing and potential....are introduced;"

Add a new item (b) to discuss measures minimizing introductions.

"(b) recommend measures to minimize the risk of introductions via those pathways and recommend measures to reduce the risk of new introductions;

(c) establish a science-based process to evaluate known invasive alien species introductions for risks posed and a coordinated and systematic risk-based process to identify, monitor, and interdict pathways...species;"

Re-letter paragraphs to account for new paragraph (b).

Section 4, last paragraph: This paragraph is confusing. Is the FAA to follow sections 2 and 4 after the Plan is developed and approved? The FAA suggests that the last paragraph in existing Section 4 state the following to provide guidance to the member agencies on what their responsibilities are until the Plan is completed, 36 months hence:

"...the Management Plan. Until the Plan is approved, each agency shall follow the requirements in section 2 of this Order. Upon completion of the Plan, each member department or agency shall incorporate the approved Plan into their respective operating procedures. If a department or agency concludes it cannot implement the recommended measures, the department or agency shall provide to the Invasive Species Council the reasons why it is unable to do so."

Mary U. Walsh,
Assistant Chief Counsel for Legislation,
AGC-60

From: Fred Bank
 To: FHWS02.FHCC.EMBAYLOR, FHWS02.FHCC.LATHOMAS
 Date: 6/22/98 3:31pm
 Subject: comments on Proposed EO 45 - Invasive Alien Species

I have reviewed the proposed EO and have the following comments:

The term 'alien' should not be used in the document. It is an old term of art, having been used primarily before 1980 when describing introduced species. We recommend either using the word, 'Nonnative' as a replacement or simply just dropping the word, 'alien' from the title and text.

The terms 'invasive alien species' and 'native species' contain elements that are vague and likely subject to any number of interpretations. For example, an invasive alien species becomes 'invasive' if it could or does harm the economy, ecology or human health of the U.S. Harm to the economy, ecology and human health are all questions of degree. How do you measure harm to the economy? What is the 'U.S. ecology' and how do you determine when it is harmed? Harm to human health may be more definite, but the measurement of effects is not always clear.

Similar questions apply to the native species definition. If a 'native species' can be one that currently occurs in a ecosystem other than the result of an introduction, we believe there is the possibility that a non-native species introduced into the U.S. many years ago could be considered native. An example would be a species introduced into one part of the country that propagates on it own into other ecosystems. Since it may now occur in other ecosystems not through introduction, it could it be considered native under the definition.

If retained in the EO, these definitions will likely require an extensive guidance document to prevent misinterpretation and misuse of the terminology.

The language in Section 2 could require agencies in some cases to take certain actions absent any Federal statute requiring them to do so. Item 2(c), for example, would require any agency to withhold Federal funds for activities that introduce invasive alien species. Many Federal programs have very specific eligibility requirements mandated by Congress which may not address the introduction of invasive species. Under these programs, Federal agencies generally would not (or could not) unilaterally deny funds if all requirements stated in the law have otherwise been met by the recipient.

No additional comments.

Fred Bank
 HRP-40 (NPD-1)

CC: FHWS02DO, FHWS02PO, BHARPER-LOBB, GORTS, GORTS, Camill...

**Comments of U.S. Coast Guard
On
Draft E.O. ["Invasive Alien Species"]**

1. The Coast Guard supports the intent of the draft E.O. to reduce the introduction and spread of invasive alien species through a coordinated program of Federal, State, tribal, and local government activity. We are glad to see that the proposed Invasive Species Council (Council) will coordinate with and "not duplicate the existing programs, authorities, and activities" of the Aquatic Nuisance Species Task Force (ANSTF), of which the Coast Guard is a key member.
2. The draft E.O. language in sections 2, 3, 4, and 5 will very likely result in new, or at least expanded, duties while providing no assurance that commensurate resources will be made available for these new activities.
3. Finally, we note that the proposal calls for the appointment of an Executive Director of the Council by the co-chairs, to be funded by the "membership as appropriate". More specific wording regarding who will fund this position would be appropriate.

Office of General Counsel

U.S. Department of Transportation
400 Seventh Street, S.W.
C-40, Room 10100
Washington, D.C. 20590
Telephone: (202)366-4687
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TO: Mac Reed FROM: Jane DeCell

FAX #:

Number of pages (including this page)	11
DATE AND TIME	6/30/98 - 6:00 PM
DATE COMMENTS / RESPONSE (IF ANY) ARE DUE	

Remarks:

Draft of Executive order -
Invasive Alien species
Package in for signature,
JDC
366-9297

The Honorable Jacob J. Lew
Acting Director
Office of Management and Budget
Washington, DC 20503

Dear Mr. Lew:

This is in response to your request for the views of the Department of Transportation (DOT) on the proposed Executive order on invasive alien species. The Department supports the proposed order's objectives of reducing the risk of introduction and spread of invasive alien species through a coordinated program of Federal, state and local activities. The Coast Guard has responsibilities to help control invasive aquatic species, and is a key member of the Aquatic Nuisance Task Force. The Federal Highway Administration assists states in controlling the spread of non-native species and noxious weeds along highway rights of way, and is a member of the Federal Interagency Committee for Management of Noxious and Exotic Weeds. The Federal Aviation Administration and the Office of the Secretary of Transportation are participating in an interagency effort to develop an alien species action plan to reduce risk of alien species introductions via aircraft at Maui, Hawaii. However, DOT has identified several serious concerns with the order's broad imposition of duties on Federal agencies. We believe these concerns should be addressed before the Executive order is signed.

Section 2 lists Federal agency duties to prevent the introduction and spread of alien invasive species. These duties appear to take effect immediately upon issuance of the order. As drafted, agencies would be subject to requirements before a list of covered species is developed, and subjected to scientific assessment of risk. DOT believes that a more effective approach would be to have the proposed Federal agency duties come into effect after the plan is developed and adopted and species of concern are identified through a science-based interagency process. Imposing these duties after an accepted list of species is adopted for all agencies and the invasive species management plan is developed and adopted will ensure that agency efforts are coordinated. This will result in an effective program and will ensure that different agencies identify invasive alien species consistently. The duties in section 2 would be moved to a new section 5.

-2-

DOT is especially concerned about section 2(c), which would impose a duty on Federal agencies to prevent the introduction and spread of invasive alien species by restricting the use of funds, programs and authorities. If it is intended that the provision apply only to Federal activities involving the intentional introduction of non-native species into the U.S. (such as through choice of plant material or pest control method), the wording should be modified to make that clear. In that case, DOT would not object to the provision. If, however, it is intended that this section have broader application, DOT has serious objections. The legal authorities in the preamble do not appear to support such restrictions by all Federal agencies. Many Federal programs have very specific eligibility requirements, and discretion to deny or approve funds may be limited. Section 2(c) would be particularly burdensome if it is interpreted to require agencies to restrict Federal funds, programs and authorities if the proposed action might unintentionally enable introduction of invasive alien species.

To permit action prior to adoption of the management plan, a new section 2 of the Executive order should encourage all agencies to examine their authorities to identify programs that might enable introduction and spread of invasive species. In addition, it should encourage agencies to determine measures that can be reasonably undertake to prevent introduction and spread of invasive species. Agencies might use the NEPA process to identify appropriate mitigation for actions that are likely to result in introduction of invasive species.

DOT also notes that participating in the proposed Invasive Species Council and developing and implementing the plan will result in new or expanded duties requiring additional resources. The proposal provides that the Council co-chairs appointment of an Executive Director of the Council be funded by the membership as appropriate. Creation and operation of a new Federal Advisory Committee Act (FACA) committee will also require budget resources. Provision of the necessary resources will need to be addressed as the Executive order is implemented.

Detailed comments and a mark up of the draft Executive order are provided in enclosures. We appreciate the opportunity to review the proposed Executive order.

Sincerely,

Nancy E. McFadden
Enclosures

Enclosure

Department of Transportation Detailed Comments
Draft of Invasive Alien Species Executive orderPreamble

The EO should clarify how this EO relates to the May 24, 1977 EO 11987 on introduction and export of exotic organisms. The proposed EO appears to incorporate several elements of the 1977 EO, although it is unclear whether the new EO supplants EO 11987, or supplements it.

The last sentence of the introduction states that a purpose of the EO is to eliminate or minimize human health impacts. As separate authorities enable the Centers for Disease Control and Prevention to address disease, we suggest a clarification to the EO, which notes that preventing the introduction and spread of disease from outside the U.S. is not covered. The term "human environment" may be less confusing.

Section 1. Definitions

Subsection (a). It is not clear what viable biological material is intended to cover. We recommend that this be clarified.

Subsection (b). To clarify that not all means of control apply in a specific instance, we suggest that the paragraph read, "Control means, *as appropriate,*

Subsection (e). DOT prefers the term "invasive non-native species" to apply to species not native to ecosystems which could be harmful if introduced. The draft definition of "invasive alien species" contains elements that are vague and likely subject to any number of interpretations. For example, an invasive alien species becomes "invasive" if it could or does harm the economy, ecology or human health of the U.S. Guidance will be needed on how to judge harm to the economy or ecosystems. The proposed definition should recognize the ability of a species to out-compete native species, decimate native populations, or reproduce unchecked. We suggest that if the term invasive alien species is retained, the definition be revised to read:

"means an alien species that does or is likely to harm the economy or ecosystems of the U.S. if introduced, because it lacks natural predators, out-competes or over-preys on natural species or lacks checks on reproduction."

Subsection (f). The definition of native species raises similar questions. If a "native species" can be one that currently occurs in an ecosystem other than

-2-

the result of an introduction, we believe there is the possibility that a nonnative species introduced into the U.S. many years ago could be considered native under the current wording of the definition.

Section 2. Federal Agency Duties

As noted in our letter, we believe that section 2 needs to be restructured as a new section 5 to make agency duties subject to section 4. This restructuring will ensure that they follow the National Invasive Species Plan development and adoption. A new section 2 should be limited to actions that agencies could reasonably take under their existing authority, prior to preparation of the management plan. It should encourage agencies to examine their authorities for identification of programs which might intentionally or unintentionally enable introduction of invasive species, and to determine types of measures agencies could undertake within existing authority to reduce risk of such introduction and spread. Such measures could, for example, include use of the National Environmental Policy Act (NEPA) process to identify appropriate mitigation measures for such actions, such as measures designed to monitor action-induced changes in species.

Section 3. Council

The order should provide more guidance on the procedures under which the Council and its subcommittee will function.

Subsection (c). To ensure continuation of current efforts, we recommend that the subsection be revised to read "coordinate with and not duplicate or *diminish* existing programs and activities..."

Subsection (e). To ensure that the most current known information on known species is available to agencies, we recommend a revision to read: "establish, develop and maintain a coordinated, up-to-date Internet web-based information network for invasive alien species."

Section 4. Management Plan/Section 5. Agency Duties

As noted above, section 4 should form the basis for the Federal duties in a new section 5, to be undertaken upon completion of the management plan. Responsibilities placed on agencies should reflect various degrees of Federal control over actions. We recommend that the order distinguish between responsibilities for addressing intentional and unintentional introductions and that restrictions apply only to intentional introduction. Finally, it is important to have a common list of species (which would be periodically

-3-

updated) to guide agencies in exercising these responsibilities. The provision in new section 5 (previously section 2(c)) should restrict funding for intentional introductions, and if language on finding how benefits of introductions outweigh impacts is retained, guidance on how that evaluation will be made should be provided. A new provision should be added to encourage grantees and permittees to take actions within their authorities that prevent introduction and spread of invasive species, and provide control of invasive alien and nonnative species.

Non-native Invasive Alien Species

Draft 5-22-98

(NEPA)

non-native

By the authority vested in me as President, by the Constitution, and the laws of the United States of America and in furtherance of the purposes of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990, as amended (16 U.S.C. 4701 et seq.), the Lacey Act (18 U.S.C. 42), Federal Plant Pest Act (7 U.S.C. 150aa et seq.), Federal Noxious Weed Act (7 U.S.C. 2801 et seq.), Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and other pertinent statutes, and to prevent the introduction and spread and provide control of invasive alien species, and to eliminate or minimize the economic, ecological, and human health impacts thereof, it is ordered as follows:

environment

Section 1. Definitions.

Non-native

(a) "Alien species" means, with respect to a particular ecosystem, any species or viable biological material derived from a species that is not a native species in that ecosystem.

(b) "Control" means eradication of infestations, reductions of populations, adapting human activities and public facilities to accommodate infestations, preventing spread from infested areas, and conducting restoration activities to prevent further invasions.

(c) "Ecosystem" means a biological community together with its physical environment.

(d) "Introduction" means the intentional or unintentional transportation, establishment, release, or escape of an alien species into an ecosystem, as a result of human activity.

(e) "Invasive alien species" means an alien species that does or could harm the economy, or ecology, or human health of the United States if introduced because it lacks native predators, out-competes, or over-preys on natural species.

(f) "Native species" means, with respect to a particular ecosystem, a species that historically occurred or presently occurs in that ecosystem, other than as a result of an introduction.

(g) "Species" means a group of organisms all of which have a high degree of physical and genetic similarity, can generally interbreed only among themselves, and show persistent differences from members of allied species.

(h) "United States" means all the 50 States, the District of Columbia, Puerto Rico, Guam, and all possessions and territories.

5 Executive Branch

Section 2. Federal Agency Duties. Federal agencies shall, to the extent permitted by law, and in cooperation with States, Tribes, and local governments, prevent the introduction and spread of invasive alien species into ecosystems and control them by:

(a) reducing the risk of introductions of alien species that are or could become invasive, and reducing the likelihood that such organisms will spread from one location to another within the United States;

(b) ensuring rapid detection and monitoring of changes in the distribution of invasive alien species; and when warranted, controlling them, in a manner that avoids or minimizes harm to non-target organisms and ecosystems;

In executing their responsibilities under the Management Plan developed pursuant to section 4 of this order,

Insert for Executive order - "Invasive Alien Species"

Section 2. Executive Branch Action

Until the Management Plan established under section 4 of this order is implemented, all Executive Branch agencies are encouraged to:

- (a) Take reasonable measures under their existing authority to prevent the introduction and control the spread of invasive non-native species;
- (b) Prepare for the development of the Management Plan provided for in section 4 by examining their authorities to identify programs that might enable introduction and spread of invasive non-native species and to determine what measures agencies might reasonably undertake to prevent such introduction and spread. Such measures could, for example, include the use of the NEPA process to identify appropriate mitigation measures for such actions, such as measures designated to monitor action-induced changes in species; and
- (c) Encourage all grantees and permittees to take appropriate actions to prevent the introduction and spread of invasive non-native species, and to provide control of such species.

(c) restricting the use of Federal funds, programs, or authorities used to introduce into ecosystems within the United States invasive alien species unless the potential benefits of such introductions outweigh the potential adverse impacts and to export native species for the purpose of introducing such species into ecosystems outside the United States where they are not native and could become invasive;

(1) intentionally

(d) developing and implementing agency specific actions that prevent the introduction, spread, and provide control of, invasive alien species;

are likely to

(2)

seek to

(e) encouraging and facilitating efforts to inform and educate a wide range of audiences about potential problems associated with the introduction and spread of invasive alien species, ways to prevent such introductions and spread, and ways to control them;

seeks to non-native

(f) ensuring the coordinated application of existing Federal agency capabilities;

(g) reducing the risk of U.S. species becoming invasive species in other countries; and

seeking to

(h) pursuing international cooperation in addressing invasive alien species.

Section 3. National Invasive Alien Species Council. A National Invasive Alien Species Council ("Invasive Species Council") of Federal agency representatives is hereby established to provide National leadership regarding invasive alien species, ensure ongoing coordination of Federal activities concerning invasive alien species, and ensure full implementation of the requirements of this order. The Invasive Species Council will consist of, but not be limited to, the Department of Interior, Commerce, Agriculture, Defense, State, Transportation, Treasury, and the Environmental Protection Agency and be co-chaired by the Secretaries of Interior, Commerce, and Agriculture. Membership will include one representative from each Federal bureau or office having responsibility for, involvement with, or affected by invasive alien species. An Executive Director, agreed upon by the co-chairs, will be appointed, and required staffing and funding will be provided by the membership as appropriate. The Invasive Species Council shall:

Non-native Non-native

and

co-chairs

(a) establish a subcommittee under the Federal Advisory Committee Act consisting of representatives from State, Tribal, and local government agencies, academic institutions, the scientific community, non-governmental entities including environmental and conservation organizations, and commercial interests to advance issues and actions and provide recommendations for consideration by the Invasive Species Council;

(b) develop and implement the National Invasive Alien Species Management Plan (Management Plan) identified in Section 4, and, after its completion, assess and report annually on the success in achieving its goals and objectives; provide the report to the Office of Management and Budget for consideration in the budget process; and update the Management Plan after each report.

Non-native

(c) ensure that the activities of the Invasive Species Council will be coordinated with and not duplicate the existing programs, authorities, and activities of on-going government and non-government activities addressing invasive alien species, including but not limited to, the Aquatic Nuisance Species Task Force (ANSTF), and the Federal Interagency Committee for the Management of Noxious and Exotic Weed (FICMNEW).

or diminish

encourage grantees and permittees to take appropriate actions to seek to prevent the introduction and spread of invasive non-native species.

(d) ensure that programs, research, and other activities among Federal agencies involved in the prevention, monitoring, and control of invasive alien species are not duplicative or cost inefficient.

non-native

(e) develop and establish a coordinated web-based information network for invasive alien species;

develop and maintain

up-to-date

non-native

(f) provide ongoing coordination for relevant Federal regulatory activity as appropriate, including, but not limited to the development and implementation of guidance, in consultation with the Council on Environmental Quality, for addressing invasive alien species through the National Environmental Policy Act and development and implementation of use and procurement requirements for native species;

NEPA

non-native

(g) encourage the development of regional approaches for addressing invasive alien species as called for under Section 5 of this order;

non-native

(h) share the latest resource information and management technologies to assist in the prevention and control of invasive alien species;

Section 4. National Invasive Alien Species Management Plan. Within eighteen months of the date of this order, the Invasive Species Council, utilizing a public process and in consultation with Federal agencies, state, tribal, and local governments, academic institutions, the scientific community, non-governmental entities including environmental and conservation organizations, commercial interests, and other stakeholders, shall prepare a National Invasive Alien Species Management Plan that addresses Federal efforts related to invasive alien species and establishes measurable outcomes and performance-oriented goals for their prevention and control. The Management Plan shall, to the extent permitted by law and where feasible:

Non-native

Non-native

(a) review existing and potential new approaches and authorities for preventing introduction of invasive alien species, including those for identifying pathways by which invasive alien species are introduced and minimizing the risk of introductions via those pathways, and recommend measures required to reduce the risk of introductions occurring. If the measures are not authorized by law, the Invasive Species Council shall develop and recommend legislative proposals for necessary changes in authority;

non-native

non-native

(b) establish a science-based process to evaluate all alien species introductions for risks posed and a coordinated and systematic risk-based process to identify, monitor, and interdict pathways that may be involved in the introduction of invasive alien species;

non-native

(c) ensure that the presence of invasive alien species is promptly detected and that changes in their distribution are monitored;

non-native

(d) identify the measures to control established invasive alien species in a cost-effective, environmentally-sound manner;

non-native

(e) identify personnel, other resources, and additional levels of coordination needed to achieve the Management Plan's identified goals and objectives;

(f) develop a process to document the ecological, human health, and other impacts from invasive alien species, and to monitor the status and trends of such impacts; and

non-native

List invasive non-native species and to

(g) identify a comprehensive approach for gaining international cooperation in addressing invasive alien species.

Within thirty-six months of the date of this order and to the extent permitted by law, the applicable Invasive Species Council member agencies shall implement the measures identified in the Management Plan. If an agency concludes that it cannot implement the recommended measures, the agency shall provide to the Invasive Species Council the reasons why ~~it is unable to do so.~~ *feasible and*

Insert section 5
Section 5. Regional Coordination. The Invasive Species Council, in cooperation with State, local, and Tribal governments and established invasive alien species programs and groups shall encourage the development of regional entities to address invasive alien species issues by implementing applicable goals and objectives of the Management Plan at the regional level, and by taking other actions such as:

(a) identifying regional priorities with respect to invasive alien species, and making recommendations to the Invasive Species Council;

(b) preparing regional plans that assign responsibility for action, identify processes for monitoring, and provide opportunity for review and revision;

(c) coordinating, where possible, on-going regional programs and activities addressing invasive alien species;

(d) developing an emergency response strategy for new invasive *non-native* alien species in the region; and

(e) providing advice to public and private entities concerning methods of preventing and controlling invasive *non-native* alien species.

Section 6. Judicial Review. This order is intended only to improve the internal management of the Executive Branch and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any other person.

Council on Environmental Quality
Executive Office of the President

722 Jackson Place, NW
Washington, DC 20503
Phone: (202) 395-7421
Fax: (202) 456-0753

FAX TRANSMISSION COVER SHEET

Date: 4/2
To: Mac Reed
Fax: 5-7294
Re: Aliens
Sender: DINAH BEAR

YOU SHOULD RECEIVE 14 PAGE(S), INCLUDING THIS COVER SHEET.

I was incorrect on FACA Committee;
draft EO has the polite head
(see Section 3).

Am also including some
background material (much
more is available,) including
reference to current E.O.

Campaign Against Invasive Alien Species An Action Plan for the Nation

Overview

On June 17, 1997, Vice President Gore directed preparation of the Administration's strategy to combat introduction and spread of plants and animals that are not native to ecosystems in the United States and which are causing great economic and ecological harm to our nation. The Vice President asked the Departments of Interior, Agriculture and Commerce to prepare the strategy in consultation with the Council on Environmental Quality and Office of Science and Technology Policy in the Executive Office of the President.

This draft Administration action plan ("Draft Action Plan") responds to the Vice President's request and recommends steps to address invasive alien species ("IAS"). The Draft Action Plan is the work product of the Administration's ad hoc Invasive Alien Species Task Force ("Task Force"). The Task Force members represent the federal agencies above and other federal agencies with an interest in invasive alien species. Most of the participants are already involved in one of two standing federal committees addressing invasive alien species: the Aquatic Nuisance Species (ANS) Task Force and the Federal Interagency Committee for the Management of Noxious and Exotic Weeds (FICMNEW).

The Draft Action Plan has been prepared by the Task Force with anticipation of public dissemination and comment through the National Council called for in Recommendation 1.

The Draft Action Plan briefly describes the problems caused by IAS and reviews needs, shortcomings and key issues. It then sets forth goals, objectives, and principles for actions to be taken. Next are eight recommendations addressing management and policy, followed by a list of recommendations organized by types of actions needed to address IAS. These are (1) listings, (2) preventing entry, (3) detection, (4) rapid assessment and eradication, (5) control, restoration, and monitoring (6) cross-cutting research and technology, (7) national information needs, (8) partnerships, education and outreach, (9) international cooperation, and (10) fund raising and financial responsibility. A draft summary of legal authorities follows at the end of the document.

The Problem

Not all alien species cause harm. Non-native species provide food, fiber, health, and recreation. Horticulture, for example, provides numerous wild and cultivated species of ornamental plants as amenities around the world. Exploration for new species and their uses in new locations underpins much of man's understanding of the planet. Breeding new strains of wild and cultivated species, often far removed from countries of origin, has become a fine art and provided a rapidly expanding world population with many of the basic needs for life.

However, invasive alien species are reducing the economic productivity and the ecological integrity of our nation's lands and waters. The rate of introduction of such species rose markedly in the last century as world travel increased and modes of transportation proliferated. The costs to society are growing also, with harm to native fish and wildlife and their habitats, renewable natural resources, agriculture, and a wide array of human activities and needs, including health.

Threat to ecosystem health in the U.S. is particularly acute because the U.S. boasts more biomes than any other country and more relatively intact ecosystems than most temperate countries.

Economic impacts to agriculture exceed \$5 billion per year for noxious weed control alone. Fisheries, waterways, and utilities have spent \$3.1 billion over the last ten years to control IAS. Indirect costs in losses to crop and rangeland productivity are estimated at \$7.4 billion per year. Direct reductions of native populations and indirect harm caused by altered habitats are increasingly diminishing the ability of future generations to sustain conventional or newly-developed uses of marine, forest, and cropland resources.

As IAS diminish and, in some cases, cause the extinction of native flora and fauna, the number of species on earth decreases. This worldwide homogenization and reduced biodiversity impoverishes the planet as a whole and limits mankind's future development of new crops and medicines for sustained growth and prosperity. Scientists have yet to put a price tag on the losses to be incurred by future generations if worldwide genetic diversity is reduced by IAS.

Conservation experts have tracked IAS plant infestations and found that they cover 100 million acres in the United States and are spreading at the rate of up to 14 percent per year—an area twice the size of Delaware. Aquatic species spread unseen through waterways and can expand in range explosively. Technical reviews estimate that between 35 and 46 percent of endangered and threatened species in the United States have been listed because of harm from IAS.

No place on earth is immune to threats from IAS. The problem is global. As people speed from country to country, opening new routes for commerce and pleasure, biological stowaways and new products for trade spread far beyond their native ranges. Epidemiologists have noted the proliferation of disease vectors and the increased speed with which new organisms spread. In fact, flu vaccinations blend mixes based on computer projections of which strains will erupt in regions of the U.S.

Agreement is widespread on the need to combat the harm caused by these non-native invaders. Private landowners and public land managers concur that weeds need to be killed, aquatic nuisance species curtailed if not eliminated, and other biological invaders ranging from mammals to bacterial pathogens eradicated or controlled to restore native ecosystem functions and processes. Congress increasingly hears calls from diverse constituencies that action must accelerate to forego spiralling future societal costs. Participants in local community-based weed management areas are linked in purpose and a sense of urgency with national organizations ranging from the Cattlemen's Beef Association to the Wilderness Society.

Needs and Shortcomings

Fundamentals

Introductions of invasive alien species can be "unintentional" or "intentional." Unintentional introductions occur as an adjunct to human activities such as trade and tourism. Intentional introductions characteristically link to production industries such as agriculture, horticulture, forestry, and aquaculture. They include the importation of non-native organisms for biological control purposes or for new commercial purposes.

Pre-introduction risk evaluation is needed before alien species are introduced intentionally, although they may not be feasible for all intentional introductions of IAS. The right balance must

be struck between level of the benefits and costs involved, taking into account long-term impacts and due regard for uncertainty. A tiered process should target the greatest accountability for the riskiest introductions. Some species should enter freely, some should be prohibited, and the remainder should be subject to some form of evaluation.

The costs of risk assessments for intentional introductions (including any necessary trials in the field or controlled environments) should be borne by importers. Final decisions on release should be made by the responsible agencies.

Unintentional introductions having economic impact can be more effectively controlled than at present by adopting more stringent quarantine regulations and penalties, and by improving transportation and handling standards and training. Still, early detection and rapid response will be necessary to stanch the flood of unintended and perhaps unidentified hitch hikers. Registration of goods (such as a 'biosafety declaration') would help to identify those exporters and importers responsible for harmful introductions, and assure that penalties can be applied when warranted.

Voluntary standards and self-enforcement are needed to complement and, in some instances, stand in lieu of regulation. Another priority is educating exporters, importers, Customs agents, wildlife inspectors, and travelers on the risks of biological invasions.

Monitoring introductions and their impacts after release is essential. Entry of IAS is generally detected by federal agency staff (APHIS for plants and insects; Fish and Wildlife Service for wildlife and fish; Coast Guard for ballast water; Customs for general shipments; and the U.S. Postal Service for shipments by mail), state eradication boards, and state or local agency scientists. Analyses indicate that IAS imports are rising despite increased efforts to stop them.

Where a new introduction (intentional or unintentional) may threaten crops, pasture or biological diversity, lack of full scientific certainty should not be used to justify time-wasting inaction. Local expertise is often key in detecting and responding to new invasions quickly, effectively and cheaply.

Where possible, eradication is the most cost-effective and ecologically sound solution to an invasive species problem. It is most feasible in the early stages of invasion, or on islands of manageable size. Where eradication is impossible, containment and control are the next best options. Integrated control methods must be chosen with care. National and regional interagency action committees are needed in the United States, and these institutions should develop IAS management plans, with methods and approaches chosen according to individual cases and the objectives of local stakeholders.

International cooperation is essential to prevent harm from biological invasions. Our nation is both exposed to harm from beyond its borders and is a source of harm to other countries. Our foreign aid program should assist developing countries in implementing domestic action plans similar to our own. The International Plant Protection Convention should be implemented vigorously to prevent importation of species that may cause economic harm to plants. We should in addition take the steps needed to implement an international regime preventing introductions of IAS that may cause environmental or economic harm to native life forms. One apparent vehicle for such a regime is a biosafety protocol under article 8(h) of the Convention on Biological Diversity which is currently being negotiated.

A concerted worldwide effort for sharing of information and technology should be encouraged in tandem with regulatory initiatives. Web-based approaches should be implemented, supplemented with newsletters and other communications tools to reach those without access to the Internet.

The United States has adopted various laws to address IAS. However current efforts have not reduced the increasing rate of infestations and spread to new locations. Cooperative ventures must be extended across jurisdictional lines and diverse stakeholders must be engaged. Local community involvement is a potent opportunity to create new understanding and urgency for a sustained campaign against invasive alien species.

Issue Review

Exclusion (or prevention of entry) of IAS into U.S. ecosystems relies upon widespread monitoring and detection activities as much as it depends upon satisfactory technologies to intercept biological agents and propagules. Thousands of IAS have already entered the U.S., but many thousands more could be imported intentionally or unintentionally as contaminants in commodity shipments, as personal property, as ornamentals, in ballast water and dunnage, and by accidental means. Risk assessment can then offer higher levels of insurance for species proposed for intentional introduction.

Early detection and rapid response resources have not kept pace with the multiple pathways available for organisms to be transported into new habitats. Infestations are frequently invisible (aquatic populations) or not appreciated for what they are (the 'silent green invasion' of plants). Although rigorous evaluation and risk analysis can limit harmful introductions of IAS, pathway interdiction to stop unintentional transport will provide the greatest protection where specific species cannot be identified. Once an invasive species has been established, expensive and difficult control activities must begin, however rapid response can substantially cut costs.

Eradication of established populations and control of spread of IAS have always been underfunded and represent a second-rate strategy, since proper exclusion could save the substantial costs for after-the-fact control efforts. However, containment and eradication represent another crucial component in a comprehensive system to safeguard against harmful impacts of IAS. Control technologies have been elaborated over the past 50 years, incorporating the basic methods of selective chemical poisons (pesticides), release of biological control agents (usually host-specific predatory organisms from the country of origin), and various physical restraints or mechanical removal (fences, electric dispersal barriers, hand-removal, burning, mowing, etc.) Appropriate technologies exist, but they have not been deployed widely and consistently.

Restoration and remediation techniques have improved markedly. Today, terrestrial systems can be recovered to near-natural states with the proper mix of site preparation, provision of natural hydrology and nutrient cycling, and judicious application of native seed mixes followed by watchful management until self-sustaining populations stabilize under natural disturbance regimes, such as fire and flooding. Aquatic systems are not so easily studied or controlled. Consequently, few aquatic restoration efforts have yet been declared a full success, and most require continuing control efforts and long-term monitoring to detect population imbalances.

Research and technology development efforts have focused primarily on IAS that have already become significant economic or ecological threats, rather than on preventing problems from occurring. The various pathways for introduction of IAS are inadequately monitored. Federal reporting on the status and trends in IAS covers only a handful of species of particular ecological or economic importance. Improved methods for long-term monitoring of established IAS, especially on public lands and waters, and for predicting the ecological and economic risks of IAS and the use of control technologies are urgently needed. Better understanding of the relationships between biological invasions, natural and anthropogenic disturbances, and changing trade patterns, life styles, institutional relationships, and political conditions is needed to provide the basis for informed policy choices. Increased international scientific cooperation is

needed to characterize the global distribution and ecology of IAS, monitor and assess pathways for the spread of IAS, identify potential biological control agents, and develop and assess management and control methods. At least 22 Federal agencies and bureaus fund or conduct research on one or more major groups of invasive organisms. The Departments of Agriculture, Commerce, and the Interior have the largest programs. Research supports the missions of particular agencies and needs of their public constituencies.

National Information Systems have not tracked the full range of aquatic and terrestrial species and pathways, and lag far behind systems for native species, especially for taxonomic identification capabilities. This information is particularly needed for notorious IAS and pathways and should be provided on a regional basis, using academic, NGO or governmental research institutions as a base of operations. Several existing institutions and databases provide information on IAS. For example, the Florida Caribbean Science Center of the USGS Biological Resources Division (<http://nas.nfrcg.gov>) has established a useful and developing data base on the Web for nonindigenous aquatic nuisance species. APHIS maintains the CAPS database, and IAS are included in the fixed-site monitoring network databases under the Forest Service's National Forest Health Monitoring Program and the NRCS National Resources Inventory. Information to support management and control of invasive weeds is provided in the FICMNEW Home Page, the Corps of Engineers' Plant Information System, and the Agricultural Research Service database on biological control agents.

In general, however, existing resources, including declassified computing capability and the State Natural Heritage Database Network, have not been well coordinated or sufficiently exploited to allow quick deployment and reduced costs. Lack of directed funding and the absence of robust regional centers have greatly hampered information accumulation and dissemination.

Engaging Partners. IAS know no boundary and honor no barrier, whether state line or river's edge. Federal, state, tribal, and private lands, protected or developed, all harbor the potential for significant harm by IAS. Seldom has an environmental issue found such widespread support among industrial and non-industrial concerns.

Coalitions exist. For example, the National Fish and Wildlife Foundation's "Pulling Together" partnership and the Invasive Weed Awareness Coalition (IWAC) which joins over 50 organizations in raising the profile for weed management. More endeavors like these are needed: efforts to combat IAS must bring together a growing complex of interests and stakeholders including private landowners, industry, environmentalists, and government or tribal agencies at all levels.

Raising the profile on IAS requires use of conventional print and electronic media markets as well as educational channels in schools, museums, visitor centers, and public transportation centers -- especially airports. This has not happened significantly to date. The outreach programs of the public land management and natural resources agencies could be advantageously redirected to build awareness and understanding of ecosystem and economic costs posed by IAS. Similarly, environmental education syllabuses have not kept pace so that control of IAS is presented as a crucial component of an ecosystem or landscape level approach to conservation.

Resources have been scant for exclusion, control, and restoration efforts. Many different organizations now are demanding action to reduce the costs for production (agriculture, livestock, forestry enterprises, and public utilities) and increase opportunities for recreation and sustainable growth (conservation, environmental, and professional groups). Partnerships are spreading, and funds are being leveraged to maximize action across jurisdictions. However, without continued building of financial support by institutions such as the National Fish and

Wildlife Foundation, the National Park Foundation, and the National Forest Foundation the need will not be met. Historically, federal, state, and tribal agencies have cooperated on wildlife-related issues. Past alliances, joint action, and shared spending have not increased fast enough to combat IAS and achieve significant improvements in land and water condition.

Federal authorities require review to assure that all IAS -- plants, animals and others, both terrestrial and aquatic -- receive systematic recognition and action. The existing ANS and FICMNEW committees work closely with tribal and state organizations on raising awareness, developing IAS management plans, and mobilizing resources to combat local infestations and reward innovative stewardship responses. However, unless elevated, these committees will continue to be frustrated in advancing the campaign's major goals and objectives.

Since the turn of the century and the passage of the Lacey Act, various legal authorities have been established to address IAS problems. Current legal authorities include: the Lacey Act; animal quarantine laws, the Plant Quarantine Act, The Federal Plant Pest Act, the Federal Seed Act, the Federal Noxious Weed Act, the Nonindigenous Aquatic Nuisance Prevention and Control Act, and Executive Order 11987. In addition, although seldom used, legal authority to address specific IAS problems may be contained in other statutes. These include: the National Environmental Policy Act; the Endangered Species Act; the Migratory Bird Treaty Act; the Coastal Zone Management Act; the Federal Insecticide, Fungicide, and Rodenticide Act; the Toxic Substances Control Act; the Comprehensive Environmental Response, Compensation, and Liability Act; and the Resource Conservation and Recovery Act.

Most of these Acts were passed to address specific problems and were not intended to address IAS issues generally. Consequently, there are gaps in legal authority, differences in approach, and potential contradictions. In addition, agencies have not fully implemented some of the regulatory authorities that currently exist. In other instances, processes may be so cumbersome as to effectively prevent the use of some regulatory tools.

A key mandate is Executive Order 11987 concerning exotic (alien) species, issued by President Jimmy Carter on May 24, 1977. Sections 2 and 3 of that Order state:

Section 2. (a) Executive agencies shall, to the extent permitted by law, restrict the introduction of exotic species into the natural ecosystems on lands and waters which they own, lease, or hold for purposes of administration; and, shall encourage the States, local governments, and private citizens to prevent the introduction of exotic species into natural ecosystems of the United States.

(b) Executive agencies, to the extent they have been authorized by statute to restrict the importation of exotic species, shall restrict the introduction of exotic species into any natural ecosystem of the United States.

(c) Executive agencies shall, to the extent permitted by law, restrict the use of Federal funds, programs, or authorities used to export native species for the purpose of introducing such species into ecosystems outside the United States where they do not naturally occur.

(d) The Order does not apply to the introduction of any exotic species, or the export of any native species, if the Secretary of Agriculture or the Secretary of the Interior finds that such introduction or exportation will not have an adverse effect on natural ecosystems.

Section 3. The Secretary of the Interior, in consultation with the Secretary of Agriculture and the heads of other appropriate agencies, shall develop and implement, by rule or regulation, a system to standardize and simplify the requirements, procedures and other activities appropriate for implementing the provisions of

this Order. The Secretary of the Interior shall ensure that such rules or regulations are in accord with the performance by other agencies of those functions vested by law, including this Order, in such agencies.

Executive Order 11987 warrants, if not requires, the kinds of actions contemplated in this Draft Action Plan. However for practical purposes it has not yet been implemented.

Action Plan

Goals, Objectives and Principles

This Draft Action Plan depends upon a continuing educational campaign to raise public awareness of IAS and the threats they pose to our economic and environmental future. The plan is based on the following goals, objectives and principles in managing invasive alien species:

Goals

1. Protect and preserve biodiversity;
2. Maintain ecosystem structure and function;
3. Reduce adverse economic and social impacts;
4. Protect human health.

Objectives

1. Prevent entry of invasive alien species into the United States;
2. Detect and eradicate newly introduced invasive alien species;
3. Manage established invasive alien species to minimize ecological and economic impacts;
4. Monitor the distribution and impact of established invasive alien species;
5. Ensure that native U.S. species do not become invasive alien species in other countries.

Principles

1. Non-native species should be imported into the United States only after demonstration that they will not harm native species, ecosystems, crops, and pasturelands.
2. Persons responsible for introducing non-native species should be responsible for demonstrating acceptable risk and for bearing management costs if such species become invasive.
3. Preventing introduction and initial spread is the best way to avoid harm from IAS.
4. Potential IAS and pathways for introduction should be identified whenever possible and evaluated before invasion and harm occur.
5. Early detection is the foundation for any good system to safeguard against IAS.
6. Early and appropriate action can reduce harm from established IAS.
7. Effective IAS management requires public awareness and participation and partnerships with stakeholders through legislation, education and action.
8. Effective IAS management is integral to sustainable management of living resources and requires an integrated, multidisciplinary approach.

~~EXECUTIVE ORDER~~
(Draft 1 April 1998)
~~INVASIVE ALIEN SPECIES~~

*The National
Environmental
Policy Act
(42 U.S.C.
4321
et. seq.)*

By the authority vested in me as President, by the Constitution, and the laws of the United States of America and in furtherance of the purposes of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990, as amended (16 U.S.C. 4701 et seq.), the Lacey Act (18 U.S.C. 42), Federal Plant Pest Act (7 U.S.C. 150aa et seq.), Federal Noxious Weed Act (7 U.S.C. 2801 et seq.) and other pertinent statutes, and to prevent the introduction and spread of invasive alien species, and to eliminate or minimize the economic, ecological, and human health impacts thereof, it is ordered as follows:

Section 1. Definitions.

- (a) "Alien species" means, with respect to a particular ecosystem, any species or other viable biological material that is not a native species in that ecosystem.
- (b) "Control" means eradication of infestations, reductions of populations, adapting human activities and public facilities to accommodate infestations, preventing spread from infested areas, conducting restoration activities to prevent further invasions.
- (c) "Ecosystem" means a biological community together with its physical environments.
- (d) "Introduction" means the intentional or unintentional importation, release, escape or establishment of a species into an ecosystem, as a result of human activity.
- (e) "Invasive alien species" means an alien species that does or could harm the economy, ecology, or human health of the United States if introduced.
- (f) "Native species" means, with respect to a particular ecosystem, a species that historically occurred or presently occurs in that ecosystem, other than as a result of an introduction.

(g) "Species" means a group of organisms all of which have a high degree of physical and genetic similarity, can generally interbreed only among themselves, and show persistent differences from members of allied species.

(h) "United States" means all the 50 States, the District of Columbia, Puerto Rico, Guam, and all possessions and territories.

Section 2. Federal Agency Duties. Federal agencies shall, to the extent permitted by law, and in cooperation with States, Tribes, and local governments, prevent the introduction and spread of invasive alien species into ecosystems and control them by:

(a) reducing the risk of further introductions of alien species that are or could become invasive, and reducing the likelihood that such organisms will spread from one location to another within the United States;

(b) ensuring rapid detection of and monitoring changes in the distribution of invasive alien species; and when warranted, controlling them, in a manner that avoids or minimizes harm to non-target organisms and ecosystems;

(c) restricting the use of Federal funds, programs, or authorities used to introduce into ecosystems within the United States alien species that could become invasive and to export native species for the purpose of introducing such species into ecosystems outside the United States where they do not naturally occur and could become harmful;

(d) developing and implementing agency specific actions that prevent the introduction, spread, and provide control of, invasive alien species;

(e) encouraging and facilitating efforts to inform and educate a wide range of audiences about potential problems associated with the introduction and spread of invasive alien species, ways to prevent such introductions and spread, and ways to control them;

(f) ensuring the coordinated application of existing Federal agency capabilities;

(g) reducing the risk of U.S. species becoming invasive species in other countries; and

(h) pursuing international cooperation in addressing invasive alien species.

Section 3. National Invasive Alien Species Council. A National Invasive Alien Species Council ("Invasive Species Council") is hereby established to provide National leadership regarding invasive alien species; ensure ongoing coordination of Federal activities concerning invasive alien species, and ensure full implementation of the requirements of this order. The Invasive Species Council will consist of, but not be limited to, the Departments of Interior, Commerce, Agriculture, Defense, State, Transportation, Treasury, and the Environmental Protection Agency and be co-chaired by the Secretaries of Interior, Commerce, and Agriculture. Membership will include, one representative from each bureau or office having responsibility for, involvement with, or affected by invasive alien species. An Executive Director, agreed upon by the co-chairs, will be appointed, and staffing provided as appropriate. The Invasive Species Council shall:

(a) invite representatives from State, Tribal, and local government agencies, academic institutions, the scientific community, non-governmental entities including environmental and conservation organizations, and commercial interests to be members of the Invasive Species Council; ;

(b) ensure that the activities of the Invasive Species Council will be coordinated with and not duplicate the existing programs, authorities, and activities of on-going government and non-government activities addressing invasive alien species, including but not limited to, the Aquatic Nuisance Species Task Force (ANSTF), and the Federal Interagency Committee for the Management of Noxious and Exotic Weed (FICMNEW).

(c) ensure that programs, research, and other activities among Federal agencies involved in the prevention, monitoring, and control of invasive alien species are not duplicative or cost inefficient.

(d) develop and implement a comprehensive national program to document the ecological, economic, human health, and other impacts from invasive alien species and monitor the status and trends of such impacts to include the establishment of a coordinated web-based information network for invasive alien species;

(e) provide ongoing coordination for relevant Federal regulatory activity as appropriate, including, but not limited to the development and implementation of guidance, in consultation with the Council on Environmental Quality, for addressing invasive alien species through the National Environmental Policy Act and development and implementation of use and procurement requirements for native species;

(f) establish, after reviewing existing approaches, a coordinated and systematic risk-based process to identify, characterize, sample, and monitor potential pathways that may be involved in the introduction of alien species, and to determine means of preventing invasive alien species from being introduced through such pathways;

(g) encourage the development of regional approaches for addressing invasive alien species as called for under Section 6 of this order;

(h) share the latest resource information and management technologies to assist in the prevention and control of invasive alien species;

(i) review and clarify existing Federal authorities concerning invasive alien species, identify any gaps and conflicts in such authorities, and, as appropriate, propose changes through administrative or legislative action; and

(j) recommend a comprehensive strategy for international cooperation in addressing invasive alien species.

Section 4. Preventing the Introduction of Invasive Alien Species.

(a) The Invasive Species Council, utilizing a public process that ensures interested stakeholder involvement, shall review existing and potential new approaches and authorities for preventing introduction of invasive alien species, including those for identifying and interdicting the pathways by which invasive alien species are introduced. Based on this review, and within 12 months of the date of this order, the Invasive Species Council shall recommend measures required to reduce the risk of invasive alien species introductions. Such measures shall include a harmonized process to evaluate all introductions for risks posed and a coordinated and

systematic risk-based process to identify, monitor, and interdict pathways that may be involved in the introduction of invasive alien species. If the measures recommended are not authorized by law, the Invasive Species Council shall advise Congress of necessary changes in authority.

(b) To the extent permitted by law, and within 24 months of the date of this order, those Federal agencies having responsibility for preventing introduction of invasive alien species and for their control shall implement the measures recommended by the Invasive Species Council. If an agency concludes that it cannot implement the recommended measures, the agency shall provide to the Invasive Species Council the reasons why it is unable to implement the recommendations.

Section 5. National Invasive Alien Species Management Plan. Within 12 months of the date of this order, the Invasive Species Council, in consultation with Federal agencies, State, Tribal, and local governments, academic institutions, the scientific community, non-governmental entities including environmental and conservation organizations, and commercial interests shall prepare a cooperative National Invasive Alien Species Management Plan (Management Plan) that addresses governmental efforts and funds related to invasive alien species and that establishes measurable outcomes and performance oriented goals for prevention and control. The Management Plan shall to the extent permitted by law and where feasible:

(a) identify mechanisms to prevent or reduce risk of the introduction and spread of invasive alien species; ensure that the presence of such species is promptly detected and that changes in their distribution are monitored; and control established invasive alien species in a cost-effective, environmentally-sound manner;

(b) review and take into account other applicable approaches to prevent the introduction and spread of invasive alien species to include those that address emergencies and require rapid response, such as response to fire and infectious disease;

(c) identify personnel, other resources, and additional levels of coordination needed to achieve the Management Plan's identified goals and objectives; and

(d) assess and report annually on the success in achieving the policy goals and objectives of the Management Plan; provide the report to the Office of Management and Budget for consideration in the budget process; and update the Management Plan after each report.

Section 6. Regional Coordination. The Invasive Species Council, in cooperation with State, local, and Tribal governments and established invasive alien species programs and groups shall encourage the development of regional entities to address invasive alien species issues by implementing applicable goals and objectives of the Management Plan at the regional level, and by taking other actions such as:

(a) identifying regional priorities with respect to invasive alien species, and making recommendations to the Invasive Species Council;

(b) preparing regional plans that assign responsibility for action, identify processes for monitoring, and provide opportunity for review and revision;

(c) coordinating, where possible, on-going regional programs and activities addressing invasive alien species;

(d) developing an emergency response strategy for new invasive alien species in the region; and

(e) providing advice to public and private entities concerning methods of preventing and controlling invasive alien species.

Section 7. Judicial Review. This order is intended only to improve the internal management of the Executive Branch and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any other person.

Fax Transmission

United States Department of the Interior Science Advisor to the Secretary

FROM: William Y. Brown Tel: 202-208-4177 Fax: 202-219-0229
DATE: July 10, 1998 Pages (inc. cover) 5

TO: Mac Reed, OMB Fax: 202-395-7294
 Dinah Bear, CEQ 202-456-0753

Mac and Dinah:

Attached is a revised draft of the invasive species executive order which addresses the comments made and is responsive to most. I also revised the document to make it less repetitive and easier to read. I can explain how the comments are addressed when we meet, if it isn't obvious to you after a reading.

I will be in the office all next week. See you then!

Attachment

Invasive Species

By the authority vested in me as President by the Constitution and the laws of the United States of America and in furtherance of the purposes of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990, as amended (16 U.S.C. 4701 et seq.), Lacey Act (18 U.S.C. 42), Federal Plant Pest Act (7 U.S.C. 150aa et seq.), Federal Noxious Weed Act (7 U.S.C. 2801 et seq.), Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and other pertinent statutes, and to prevent the introduction of invasive species and provide for their control, and to minimize the economic, ecological, and human health impacts which invasive species cause, it is ordered as follows:

Section 1. Definitions.

- (a) "Alien species" means, with respect to a particular ecosystem, any species, including its seeds, eggs, spores, or other biological material capable of propagating that species, that is not native to that ecosystem.
- (b) "Control" means, as appropriate, eradicating or reducing invasive species populations, preventing spread of invasive species from areas where they are present, and taking steps such as restoration of native species and habitats to reduce the effects of invasive species and to prevent further invasions.
- (c) "Ecosystem" means the complex of a community of organisms and its environment functioning as an ecological unit.
- (d) "Introduction" means the intentional or unintentional escape, release, dissemination or placement of an alien species into an ecosystem as a result of human activity.
- (e) "Invasive species" means an alien species whose introduction is likely to cause economic or environmental harm or harm to human health.
- (f) "Native species" means, with respect to a particular ecosystem, a species that, other than as a result of an introduction, historically occurred or currently occurs in that ecosystem.
- (g) "Species" means a group of organisms all of which have a high degree of physical and genetic similarity, generally interbreed only among themselves, and show persistent differences from members of allied groups of organisms.
- (h) "Stakeholders" means, but is not limited to, state, tribal, and local government agencies, academic institutions, the scientific community, non-governmental entities including environmental and conservation organizations, and commercial interests.

(i) "United States" means the 50 States, the District of Columbia, Puerto Rico, Guam, all possessions and territories, the waters of the United States and the Exclusive Economic Zone.

Section 2. Federal Agency Duties. (a) Each Federal agency whose actions may affect the status of invasive species shall:

(1) identify such actions;

(2) subject to the availability of appropriations, use accessible programs and authorities to prevent the introduction of invasive species; to detect and respond rapidly and to control populations of such species in a cost-effective and environmentally sound manner; to monitor invasive species populations accurately and reliably; to provide for restoration of native species and habitat conditions in ecosystems that have been invaded; to conduct research on invasive species and develop technologies to prevent introduction and provide for environmentally sound control of invasive species; and to promote public education on invasive species and the means to address them; and

(3) to the extent permitted by law, not authorize, fund or carry out any action likely to cause or promote the introduction or spread of invasive species in the United States or elsewhere unless, pursuant to guidelines which it has prescribed, the agency has determined and made public its determination that the benefits of such action clearly outweigh the potential harm caused by invasive species; that all feasible and prudent measures to minimize risk of harm will be taken in conjunction with the action; and, in cases of export for the purpose of introducing invasive species into ecosystems outside the United States where they are not native, that the importing country has given prior informed consent.

(b) Federal agencies shall pursue the duties set forth in this section in consultation with the Invasive Species Council established by section 3 of this order and in cooperation with stakeholders as defined in section 1 of this order, as appropriate, and, as approved by the Department of State, with international organizations and foreign nations.

Section 3. Invasive Species Council. (a) An Invasive Species Council ("Council") is hereby established whose members shall include the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Defense, the Secretary of State, the Secretary of Transportation, the Secretary of Treasury, and the Administrator of the Environmental Protection Agency. The Council shall be co-chaired by the Secretary of the Interior, the Secretary of Agriculture and the Secretary of Commerce. The Council may invite additional federal or state agency representatives to be members, including representatives from subcabinet bureaus or offices with significant responsibilities concerning invasive species, and may prescribe special procedures for their participation. The Secretary of the Interior shall, with concurrence of the co-chairs, appoint an Executive Director of the Council and shall with assistance from other members of the Council and as authorized by law provide necessary additional staff and administrative support.

(b) The Secretary of the Interior shall establish an advisory committee under the Federal Advisory Committee Act to provide information and advice for consideration by the Council, and shall, after consultation with other members of the Council, appoint members of the advisory committee representing stakeholders as defined in section 1 of this order.

Section 4. Duties of the Invasive Species Council. The Invasive Species Council established by section 3 of this order shall provide national leadership regarding invasive species, and shall:

(a) ensure that this order is fully implemented and that Federal agency activities concerning invasive species are coordinated, complementary, cost-efficient and effective, relying to the extent feasible on existing organizations addressing invasive species such as the Aquatic Nuisance Species Task Force, the Federal Interagency Committee for the Management of Noxious and Exotic Weeds, and the Committee on Environment and Natural Resources;

(b) encourage planning and action at local, state, regional, and ecosystem-based levels to achieve the goals and objectives of the Management Plan, in cooperation with stakeholders and existing organizations addressing invasive species;

(c) develop a comprehensive approach for international cooperation in addressing invasive species;

(d) develop, in consultation with the Council on Environmental Quality, guidance for federal agencies on use and procurement of native species and on consideration of invasive species under the National Environmental Policy Act;

(e) develop a process to document, evaluate, and monitor impacts from invasive species on economics, the environment, and human health;

(f) establish and maintain a coordinated, up-to-date, Internet-based network facilitating access to and exchange of information concerning invasive species, including but not limited to information on distribution and abundance of invasive species; life histories of such species and invasive characteristics; economic, environmental and human health impacts; management techniques, and laws and programs for management, research and public education; and

(g) prepare and issue a national Invasive Species Management Plan as set forth in section 5 of this order.

Section 5. Invasive Species Management Plan. (a) Within eighteen months after issuance of this order, the Council shall prepare and issue the first edition of a national Invasive Species Management Plan ("Management Plan") which shall detail and recommend performance-oriented goals and objectives and specific measures of success for Federal efforts concerning invasive

species. The Management Plan shall recommend specific risk-based objectives and measures for carrying out each of the federal agency duties set forth in section 2 (a) (1), (2) and (3) of this order and shall set forth steps being taken by the Council to carry out the duties assigned to it under section 4 of this order. The Management Plan shall be developed through a public process and in consultation with Federal agencies and stakeholders as defined in section 1 of this order.

(b) The first edition of the Management Plan shall include a review of existing and prospective approaches and authorities for preventing introduction of invasive species, including those for identifying pathways by which invasive species are introduced and for minimizing the risk of introductions via those pathways, and shall identify research needs and recommend measures required to minimize the risk that introductions will occur. Such recommended measures shall include a science-based process to evaluate risks associated with introductions of alien species and a coordinated and systematic risk-based process to identify, monitor, and interdict pathways that may be involved in the introduction of invasive species. If recommended measures are not authorized by current law, the Council shall develop and recommend legislative proposals for necessary changes in authority.

(c) The Council shall update the Management Plan annually and shall concurrently evaluate and report on success in achieving the goals and objectives set forth in the plan. The Management Plan shall identify the personnel, other resources, and additional levels of coordination needed to achieve the Management Plan's identified goals and objectives, and the Council shall provide each edition of the Management Plan and each report on it to the Office of Management and Budget for consideration in the budget process. Within 18 months after measures have been recommended by the Council in any edition of the Management Plan, each Federal agency whose action is required to implement such measures shall either take the action recommended or shall provide the Council with an explanation of why the action is not feasible. The Council shall assess the effectiveness of this order no less than once each five years after the order is issued and shall report to the Office of Management and Budget on whether the order should be revised.

Section 6. Judicial Review. This order is intended only to improve the internal management of the Executive Branch and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any other person. Executive Order 11987 on Exotic Species (May 24, 1977) is hereby revoked.