

White Paper
Multinational Species Conservation Act
July 16, 2007

This paper outlines the reasons for, and issues in, developing and supporting a bill that provides an incentive-based, voluntary approach in protecting endangered and threatened species of fauna and flora throughout the world, modeled on existing programs, but on a much broader scale with significant more funding. Specifically, it outlines: (1) a brief description of the existing programs; (2) the context for considering a broader approach now; (3) a rough description of what this approach might look like; and (4) some of the key issues that will need to be addressed, and suggested possibilities for addressing them.

1. A Brief Description of Existing Programs

1.1. Overview

There are, in total, six laws that promote conservation of endangered and threatened species overseas, relating to: African elephants; rhinos and tigers; Asian elephants; neotropical birds; great apes; and sea turtles. The first, established in 1988 for African elephants, created the basic framework that has since been followed for subsequent programs, including the most recent for sea turtles, enacted in 2004. Two additional bills have been introduced in both the House and the Senate this Congress to establish grants programs and funds for cats and rare canids, and cranes.

These laws establish non-regulatory, voluntary grants programs for protecting and conserving these species, managed by the U.S. Fish and Wildlife Service (FWS). In general, eligible applicants for the grants include relevant wildlife management authorities of host countries, the CITES Secretariat, and any person (including organization) with demonstrated expertise in conservation. The laws detail the application process, including opportunity for comments, review, notification and award of grant proposals. Federal funds awarded under these programs are leveraged by approximately 3:1 with non-Federal funds. Overall, they have strong bipartisan support. As discussed below, there are some important differences among the programs, some of which stem directly from the legislation, and some of which are administrative in nature, which complicate implementation.

1.2. Funding

Authorized funding levels of each of these laws are as follows:

Program	Authorization level
African Elephants	\$5,000,000
Rhinos and Tigers	\$10,000,000
Asian Elephants	\$5,000,000
Neotropical Migratory Birds	\$5,000,000
Great Apes	\$5,000,000
Marine Turtles	\$5,000,000

Actual appropriations have ranged over the life of these programs. In 2000, total funding for all programs equaled \$2.4 million; by 2005, total funding had risen to \$9.8 million; and this year, for 2008, total funding proposed by the House Interior Appropriations Subcommittee is \$15 million.

1.3. Administrative issues

The FWS implements all of the programs, and the U.S. Treasury has created an administrative construct for managing these programs, placing all funds for these laws under an umbrella Multinational Species Conservation Fund.

Administrative costs allowed to FWS for all programs are 3% of annual appropriations, or \$80,000, whichever is greater. Early versions of the programs had only a percent allowance for administrative costs, but those laws have been amended to allow for a minimum dollar level as well. However, this floor is still small and insufficient, as evidenced in part by a backlog of over one year for reviewing and awarding grant proposals.

The Office of International Affairs implements all but the Neotropical Bird Conservation Act, which is implemented by the Office of Migratory Birds (which includes NAWCA). Although FWS implements the Sea Turtle Conservation Act, it provides significant funding under that law to NOAA, which has jurisdiction for sea turtles in the marine environment.

1.4. Cooperation with USAID and other Federal agencies

One of the complications regarding implementation of the current programs is the varying provisions for cooperation with USAID and other Federal agencies, as depicted in the following table:

Program	Provision for cooperation
African Elephants	None
Rhinos and Tigers	The Secretary must consult with USAID. The Secretary must consult with the USAID Administrator and provide a copy of final project proposals
Asian Elephants	The Secretary must consult with USAID Administrator and provide a copy of final project proposals
Neotropical Migratory Birds	The Secretary must cooperate with other federal agencies to enhance conservation by developing and entering into agreements with existing efforts
Great Apes	The Secretary must consult other appropriate federal officials
Marine Turtles	The Secretary must consult other appropriate federal officials

FWS interactions specifically with USAID differ among the laws. The Secretary must consult with the USAID Administrator only under the Rhinoceros and Tiger and the Asian Elephant conservation programs. For the other programs, excepting the African

Elephant Conservation Fund, the Secretary must consult with appropriate Federal agencies, which may or may not include the USAID Administrator.

1.5. Substantive legislative differences among the programs

Matching Funds: The Neotropical Migratory Bird law is the only one of the six that requires matching funds. Under this law, the federal share of a project is limited to 25%. The Marine Turtle, Asian Elephant, and Great Ape laws allow the Secretary of the Interior to give preference to projects with matching funds.

Geographic scope: The Neotropical Migratory Bird law limits funding to bird species in the US, Latin America, and the Caribbean.

Local participation: Only the Neotropical Migratory Bird law includes local public participation in the development and implementation of projects as a criterion for project approval.

Consultation with local governments: The Marine Turtle, Asian Elephant, and Great Ape laws require the Secretary of the Interior to consult on proposals with the local government in which each proposal will be conducted.

Sensitivity to local historic and cultural resources and compliance with applicable laws: This is a criterion for only the Neotropical Migratory Bird law.

Advisory group: Only the Marine Turtle law provides for an advisory board, which may be convened by the Secretary, to assist in implementing the law.

Reports to Congress: The Neotropical Migratory Bird and the Marine Turtle laws require the Secretary of the Interior to submit a report to Congress on the results and effectiveness of the program and recommendations for improvement and continuation. The African Elephant law requires that the Secretary of the Interior submit a report to Congress every year regarding the fund and the status of the African elephant.

Substantive prohibitions: The African Elephant law requires the Secretary of the Interior to gather information about the conservation programs of each ivory producing country and then to establish moratoria on the importation of ivory from countries that fail to meet certain criteria regarding nature of conservation programs and compliance with CITES. It also identifies illegal activities relating to ivory importation/exportation and establishes penalties, rewards, and enforcement procedures. The Rhino and Tiger Conservation Act provides a prohibition on advertising products as containing tiger parts, and provides for an educational program. The Asian Elephant law prohibits funds for captive breeding programs.

2. Context for a Broader Approach to Multinational Species Conservation

2.1. Previous efforts for a broader approach

In 1999, Congressman Saxton introduced HR 3407, the Keystone Species Conservation Act. That bill defined ‘keystone species’ as a species of fish or wildlife listed under the ESA or under Appendix I, II or II of CITES. It prioritized funding for projects that (1) for keystone species that are the most imperiled and that have support of the host country wildlife management authority; (2) receive the greatest level of non-Federal matching funds; and (3) enhance local capacity for conservation of the species. It was authorized at \$10 million. There was one hearing on the bill before the Subcommittee on Fisheries Conservation, Wildlife and Oceans of the House Resources Committee, on June 20, 1999. In testimony by then Director Jamie Clark, FWS supported the bill but noted that ‘keystone species’ should be broadened to include ‘other species of biological importance or of value as flagships’ in order to support proactive conservation initiatives with leveraging power and to conserve species prior to their endangerment. FWS further recommended that all funding be directed outside the U.S. also suggested, in terms of implementation, that there be an initial planning effort to identify specific ecoregions in the world to maximize impacts of conservation efforts, followed by development of a species priority system to allocate limited funds.

In 2004, Congressman Gilchrest introduced HR 5096, the Flagship Species Conservation Act. That bill included fauna species on ESA threatened and endangered lists or on CITES Appendix I or II, found wholly outside the U.S., and that had some charismatic quality, defined as “appeal[ing] to the public and ha[ving] other features that make it suitable for communicating conservation concerns.” Administratively, it was virtually identical to the newer great apes and marine turtle programs. It was authorized at \$10 million annually for three years. There were no hearings on this legislation, and no Senate companion legislation.

2.2. Scientific and political justification

The 2006 *IUCN Redlist* has more than 16,000 species of fauna and flora identified as threatened, of which more than 5,600 are vertebrates. Among major groupings of species, percent of species currently threatened is extremely high: according to the Redlist, 12% of birds, 23% of mammals, and 32% of amphibians are all threatened. Within amphibians, turtles and tortoises are 42% threatened. Fishes are also poorly represented, but roughly a third of sharks, rays and chimaeras have been assessed and 18% of this group is threatened.

The existing multinational species funds, by contrast, cover a very limited number of species, and only certain groupings, primarily mammals (with the exception of birds and sea turtles). Each program has required several years of dedicated effort and outreach by broad coalitions to ultimately become law. Attempting to protect the world’s biodiversity one law and one species at a time has profound limitations and inefficiencies. More importantly, with each new coalition, each new bill, and each new species or grouping of species to be conserved through a grants program, the credibility of the conservation

community is potentially diminished, and the political capital required to enact new legislation is potentially increased. The question has already been asked, at what point does it end, and our political supporters may ultimately suffer from ‘conservation fatigue.’

2.3. Reform of the U.S. foreign assistance strategy

The Administration has recently reformed its foreign assistance strategy, highlighted in particular with proposed budget cuts in funding for biodiversity conservation and natural resource management as well as entire mission closures. While Congress may restore funding for biodiversity conservation through an earmark, the long-term restructuring of USAID underscores the fragility of that funding. The international conservation community needs to promote additional sources and alternative vehicles of significant funding for biodiversity.

2.4. Legislation on climate change

With Congress focused on legislation to address climate change, there are isolated efforts to address the specific impacts of climate change to ecosystems and species. These efforts seek to create programs for mitigation of impacts, and to facilitate adaptation of habitats and species. Funding for these efforts exist hypothetically through revenues that would be generated through the cap-and-trade mechanisms. The international conservation community should be prepared with a program or vehicle to capture some of the projected revenues generated through a cap-and-trade program, and develop a legislative proposal focusing on climate and international biodiversity.

3. A Rough Description of a Broader Approach

3.1. Overview of a broader approach

A broader approach to multinational species conservation would require a concerted effort to develop a legislative proposal that would use as a starting point the existing programs, but that would need to address a number of challenges presented by a law whose scope and funding would be on a significantly greater scale. In sum, the proposal would establish a non-regulatory, voluntary grants program that would allow eligible applicants to apply for grants to conserve imperiled species and related habitats. It would also need to provide FWS with a balance between clear legislative parameters and sufficient administrative flexibility, so that the program is both manageable and malleable. The existing laws elaborate on the processes relating to specific grant applications and decisions; a new broader law would need to elaborate on the processes relating to programmatic priorities and decision-making.

There are two significant political issues surrounding this approach. The first is funding. Early discussions indicate that there would not be interest in this proposal if there would not be significant increases in authorization levels, e.g., \$100 million. One of the reasons that the previous flagship and keystone species bills failed is that they provided no more

than \$10 million. The second is the status of the existing programs, as well as those in the pipeline (e.g., cats and dogs). Again, early discussions indicate that there would be interest in a broader approach only on condition that the existing programs are ‘grandfathered,’ i.e., remain on the books and funded individually, and not subsumed by, or repealed by, a new law.

3.2. Advantages and disadvantages

The primary advantage of a broader approach is the establishment of one legislative framework for virtually all FWS international conservation grants funding. A second advantage is the creation of a vehicle to seek a significantly greater level of appropriations for international conservation. A third advantage is the creation of an alternative source of biodiversity conservation funding outside of USAID.

One disadvantage to this approach is the loss of an opportunity for building public awareness. By focusing on charismatic mega-fauna, Congress gets credit on widely supported conservation priorities, and NGOs find opportunities for fundraising and outreach. Another disadvantage is that a broader program might not receive adequate funding, and a limited pool of funds may be diluted across many species and geographic regions.

4. Key Technical Issues to be Addressed

4.1. Eligible Species

The first issue in addressing the scope of the bill is in determining eligible species. This issue has three components: (1) what list(s) of endangered or threatened species should be used to determine species eligibility; (2) what taxa or families should be used to determine species eligibility; and (3) what jurisdictional authority should be used to determine species eligibility.

In terms of (1), potential lists include the IUCN Redlist; the CITES Appendices I and II; and the ESA threatened and endangered lists. According to FWS, the number of species at issue on each of those lists total 1,528; 679; and 567, respectively. Taking all three of those lists provide maximum scope, but each list presents flaws. For example, the foreign species listed under the ESA is not an accurate reflection of imperiled species in greatest need, but rather a reflection of political decisions and petition requests; the CITES appendices reflect political decisions by states, and further focus on species whose survival is connected to international trade.

In terms of (2), there is an issue whether the new program should focus on only certain groupings, such as vertebrates or mammals, or whether it should include all fauna including amphibians and invertebrates, or whether it should also include flora. One question in this is whether eligibility should be tied to some notion of charismatic fauna, as was provided in the 2004 Gilchrest bill.

In terms of (3), there is an issue whether the new program should include marine species as well as terrestrial species. Marine species, with few exceptions, are under the jurisdiction of NOAA. If marine species were included in this initiative, it would raise jurisdictional issues in moving through Congress (In the Senate, NOAA is under Commerce Committee while FWS is under EPW), as well as jurisdictional issues in implementation. At the same time, an omnibus species program should certainly include marine species, and this may warrant addressing the jurisdictional challenges.

4.2. Eligible Countries

As noted above, all but the Neotropical Bird law provides for funding for projected located wholly outside the U.S. However, they do not specify that funding needs to be limited to developing countries. This has not been an issue previously, as the existing programs all conserve species that are found in developing countries. However, a broader program could raise concerns regarding the geographic scope. Indeed, this controversy has already arisen in the context of cats and dogs, and potential funding for European wolves.

4.3. Priorities for Funding

Once the basic scope of the law is defined through eligibility criteria, a prioritization process needs to be established, so that FWS will not find itself overwhelmed with grant requests for thousands of species, and yet will maintain flexibility to address needs as they arise. Priorities can be developed at two points of implementation: (1) in setting up the program and determining which areas and which species warrant funding; and (2) in evaluating specific proposals.

Priorities at the programmatic level might include: identifying specific ecoregions, such as those that are highest in threatened biodiversity; targeting certain groupings of species, such as those that are most endangered, or most taxonomically unique, or most ecologically important; or addressing specific threats, such as climate change, or poaching, or habitat loss.

Priorities at the proposal level might include: proposals conserving the greatest number of species; proposals conserving species with immediate and redressable needs; proposals with the greatest non-Federal leverage or match; proposals with the greatest potential for success; proposals with the greatest opportunity for local capacity building; etc.

4.4. FWS Implementation

A broad program raises a number of issues for FWS implementation. First is providing adequate administrative costs to FWS, and confirming that existing levels of 3 percent of appropriations or \$80,000 would be adequate. Second is ensuring the flexibility to adapt to immediate and unexpected needs. One suggestion has been to set aside a certain level of appropriations, e.g., 25 percent, for species and projects that fall outside the programmatic priorities. Another suggestion is to build such needs directly into the

criteria for funding. Third is determining the appropriate internal review of FWS on a periodic basis of its priorities and program guidelines.

4.5. Interagency Coordination

Interagency coordination is an issue for several reasons. First, a broader bill should attempt to bring some consistency into the process that currently takes place, especially between FWS and USAID. As noted above, each program has a different requirement. Second, in light of a broader scope, there may be a greater need to coordinate with Federal agencies, who may have valuable input for FWS in shaping priorities and making grant decisions. Lastly, other agencies may benefit from greater knowledge of FWS programs and priorities. Potential synergies may exist that have not been fully explored. For example, as DOD spends more money and effort addressing security concerns in Africa, Asia and Latin America, this effort may be coordinated with natural resource governance promoted by FWS; as DOE invests in clean energy technologies in, and technology exports to, the developing world (such as biofuels), there may be programs of relevance to FWS and its work in forests of Asia, Africa and Latin America.

4.6. Program Oversight

With a broader program comes the possible need for greater oversight and outside review of program implementation. Such review can take place on the programmatic priorities established by FWS, as well as on specific grants decisions. Possibilities can include the establishment of an advisory board of some kind. Such a board can consist of NGOs, although this may raise potential conflicts in connection with funding proposals. It might consist of governmental and intergovernmental representatives, from the U.S. and multilateral bodies. It might consist of a panel within the National Academy of Sciences.

4.7. Title

Previous bills used ‘flagship species’ and ‘keystone species’ in their titles. Neither of these do justice to the notion that the initiative needs to capture a broader array of species and move towards a scientifically based program for species conservation.