

## Kyoto Climate Agreement is a Critical First Step

**M**ore than 150 nations adopted a historic agreement in Kyoto, Japan, in December to protect the Earth's atmosphere and climate. For the first time, nations agreed to place legally binding limits on their emissions of heat-trapping greenhouse gases. Most scientists agree that these gases have already begun to warm the Earth and, left uncontrolled, would cause significant and potentially dangerous changes in the world's climate.

"The final agreement that emerged from Kyoto is a critical first step toward stabilizing the Earth's climate," said EDF executive director Fred Krupp, who went to Kyoto with six other EDF staff to work for an effective agreement. "It represents a watershed moment in the history of environmental protection and international diplomacy, but there's still much more work to be done to assure that the agreement's targets are met," Krupp added.

Negotiations in Kyoto had largely been stalemated until the 8th day of the 10-day



*With time running out, EDF's Fred Krupp and other leaders of U.S. environmental groups called a pivotal press conference to present a clear joint statement of priorities.*

conference, when Vice President Gore addressed the delegates and signaled the willingness of the U.S. to commit to greater reductions in emissions if other nations strengthened their positions on key issues. EDF had pressed Gore's staff on the

urgency and importance of this signal, and it sparked reciprocal flexibility by other nations.

### Environmental Alliance Was Crucial

Sensing unwanted progress, the opponents of an agreement (including some oil-producing countries and polluting industries) then redoubled their efforts to stymie the negotiations. At this point EDF, Greenpeace International, the Natural Resources Defense Council, and the World Wildlife Fund joined forces, signing a statement of priorities drafted by EDF attorney Joe Goffman. Reporters mobbed the press conference at which this first clear joint statement by U.S. and European non-governmental organizations was presented. European Union delegates, who had resisted a truly binding agreement backed up by penalties for non-compliance, felt pressure to move toward a greener position and agreement seemed closer.

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## Cutting Waste in the Overnight Shipping Industry

**T**he overnight shipping industry uses more than a billion shipping envelopes and boxes each year. This packaging creates a huge amount of solid waste once used, and its production requires large quantities of paper and plastic, uses energy and water, and creates both air and water pollution.

A study of the packaging practices of the country's top five overnight shipping companies shows that the industry could cut its waste and pollution in half simply by switching to reusable packaging. This and other findings are reported in *Preferred Packaging: Accelerating Environmental Leadership in the Overnight Shipping Industry*, issued by the Alliance for Envi-



*With more than a billion packages used by the overnight shipping industry each year, actions suggested by the Alliance could have an enormous impact on the environment.*

ronmental Innovation, a joint project of EDF and The Pew Charitable Trusts.

The report praises several instances of industry leadership. For example, United Parcel Service (UPS) broke new ground by developing the industry's first two-use reusable shipping envelope, which is now being tested. The United States Postal Service provides a shipping envelope with a very high post-consumer recycled content—80%. Airborne Express supplies its customers with a box that has 82% post-consumer recycled fiber content and uses no bleached paper.

The study compared the packaging used by Airborne Express, DHL, Feder-

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Scientists say Gulf of Maine cod stocks can't withstand more overfishing. To help them recover, areas in the Gulf were recently made off-limits to fishing.

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By starting early and using market-based tools, the United States can make a smooth transition to reduce greenhouse gas emissions

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Two photographers strive to keep species from disappearing.

### 7 Western Water Justice

A new water accord brings economic and ecological benefits to all.

*We welcome member comments. Write to Mailbag, EDF Letter, 257 Park Avenue South, New York, NY 10010. (Or write to [members@edf.org](mailto:members@edf.org) via the Internet or fax us at 212-505-2375.) Letters may be edited for brevity and clarity.*

Dear EDF:

Are there alternatives to using staples at the center of our EDF newsletter so that we don't have to pull them out to recycle them? Are staples environmentally preferable to using glue or other binding procedures? I suggest you use neither staples nor glue in your binding.

*Morris Jerome  
Sacramento, CA*

We mail *EDF Letter* without an envelope to save paper, but then we need staples, glue, or adhesive seals to hold the eight pages and reply envelope together in the mail. EDF solid waste expert Dr. Richard Denison said, "Staples are not an issue for recycling. There's no need at all for a user to remove them before recycling. As the paper is processed for recycling, they will be screened out efficiently and without creating any problems. In my view, staples are much more environmentally benign than adhesives of any sort, with regard to recycling and disposal as well as manufacturing impacts."

Dear EDF:

We would like to reprint "How to Build or Redesign a 'Green' Office or Home" from the November 1997 *EDF Letter* in our newsletter. Please tell me your reprint requirements.

*Cairril Adaire  
Bloomington, IN*

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## Wildlife Attorney Celebrates 20th Anniversary at EDF

Attorney Michael Bean recently marked 20 years as chair of EDF's wildlife program. Widely considered to be America's foremost expert on national wildlife law, Bean leads legislative, policy-making, and litigation activities on behalf of wildlife for EDF and coalitions of environmental organizations. According to Donald Carr, former chief of the Justice Department's wildlife section, "Any number of endangered species owe their continued existence to Michael Bean."

"Michael's humility and grace, resourcefulness, and effectiveness are a model for all of us to emulate," said EDF executive



Laura Gassler

director Fred Krupp, in declaring December 19, 1997, Michael Bean Day at EDF.

## EDF Helps Add Open Space In New York Urban, Rural Areas

Pier 40, on New York City's Hudson River, and Sterling Forest, a 17,500-acre natural refuge that straddles the New York-New Jersey border 40 miles northwest of the city, will be available to the public as open space, thanks in part to EDF efforts.

A state Supreme Court ruling on a lawsuit brought by the Downtown United Soccer League, EDF, and Greenwich Village Little League will open Pier 40—now a parking lot—for use as a park with ball fields. EDF scientist Dr. Michael Oppenheimer, a local resident, was a plaintiff in the suit. EDF is an active member of the Hudson River Park Alliance, a coalition of groups working toward the creation of Hudson River Park.

EDF has long sought to save Sterling Forest, working closely with the Palisades Interstate Parkway Commission and many New York and New Jersey environmental organizations. A developer had proposed using the forest land to build 13,000 homes, 8 million square feet of commercial space, roads, and several golf courses. In late 1996, Congress committed \$175 million toward the \$55 million needed to buy the land from the private compa-

ny that owned it. EDF trustee Christopher J. Elliman helped negotiate the purchase, and the states of New York and New Jersey



Bob Thomas/Tony Stone

*Children's soccer leagues could use the ball fields.*

both contributed funds. Just before the February closing deadline, the newly formed Doris Duke Charitable Foundation granted the final \$5 million to complete the deal.

"Both of these actions demonstrate EDF's commitment to parks and ecologically significant open space in the New York metropolitan area," said EDF general counsel James T.B. Tripp.

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## Director's Message

### A New Force at Kyoto

I last wrote here just before leaving for the climate summit in Kyoto. It's great to report the positive results from that effort (see page 1). Admittedly, large challenges lie ahead. Key treaty provisions still need to be negotiated. Special interests are organizing to block U.S. implementation. Some in Congress are spoiling for a partisan fight. Nevertheless, responsible business and political leaders, in cooperation with environmental groups, are working to build support for this historic treaty.



Fred Krupp

EDF played a leadership role, in close cooperation with non-governmental organizations (NGO's) from around the world. This treaty, like the international land mine accord, was prompted by NGO's urging action. Both treaties underscore the strengthened role of NGO's in world affairs.

EDF's office at the Kyoto Convention Center—one of just half a dozen NGO offices authorized by the U.N.—was a hub of activity. A seven-member EDF staff team met continually with delegates from around the world, U.S. Senators, other NGO's, and the press, all connected to one another through ubiquitous cell phones. We met formally with the U.S. delegation daily, but informal communications were nearly continuous. We helped interpret developments for journalists who posted hourly updates on the Internet and filed stories to meet deadlines around the world, making delegates aware they were being watched constantly.

In the final days, NGO's emerged as a powerful force for a good agreement. Oil-producing countries and some American fossil fuel industry lobbyists launched a cynical last-ditch effort to kill the treaty by urging developing countries to strip out the emissions trading mechanism. Without cost saving tools like trading, the U.S. and other countries would oppose the treaty. Virtually unified international NGO support for trading and for ambitious targets was key to saving the treaty. We were able to bring along a number of developing countries.

EDF members helped make our efforts possible. Thank you! We'll need your continued support to make the Kyoto promise a reality.

*Fred Krupp*

## Closures Will Benefit New England Fisheries

Responding to new evidence that cod in the Gulf of Maine have declined to the lowest level ever observed, the New England Fishery Management Council approved tighter fishing restrictions to rebuild these cod stocks. Despite opposition from segments of the fishing industry and some elected officials, the Council voted to create the first significant year-round "no-take" marine protected area in the Gulf; to establish a series of one-month large-area closures to protect spawning fish as they move up the coast; and to cut back the allowed daily catch of cod.

EDF attorney Doug Hopkins, the only environmental group representative on the Council, praised the action as a clear victory for the cod. "This decision," he said, "should keep the Council's regional plan to rebuild depleted stocks of groundfish—



Sara Gray/Tony Stone

*Recovery of seriously depleted stocks of cod, haddock, and flounder is essential to the long-term health of Maine's fishing industry.*

cod, haddock, and flounder—on track."

Although Gulf of Maine cod were also shown to be dwindling in 1994 and in June 1997 to have declined even more, the Council had ignored scientific advice to close a significant part of the area to fishing. Instead, it adopted other more limited measures and delayed further action until data on the effects of the measures were known. The latest report confirms that these cod stocks cannot withstand any further overfishing. After approval by the National Marine Fisheries Service (NMFS), the new rules are expected to take effect by May 1, the start of the 1998-99 season.

### No-Take Zones Appear to be Working

The Council's Multispecies Monitoring Committee, which confirmed the critically low level of Gulf of Maine cod, also had some good news to report: the large no-take marine protected areas on Georges Bank east of Cape Cod appear to be working. The Council and the NMFS established these no-take areas in December 1994, after scientists warned that Georges Bank cod, haddock, and yellowtail flounder were at the brink of commercial extinction. The latest data show signs that these stocks are ending their decline and have begun to rebuild. The continuing recovery of Georges Bank groundfish offers hope that, with protection provided by the new no-take zone and the other new fishing restrictions, Gulf of Maine cod can also begin to recover from their severe depletion.

## Overnight Shipping Industry Can Reduce Waste

*Continued from page 1.*

al Express, UPS, and the U.S. Postal Service. The report recommends ways industry can reduce its environmental impact with a minimum of effort and often with cost savings.

### Reusable Packaging is Clear Winner

Reusable packaging offers both environmental and business benefits, in terms of lower costs and greater market share from customers who appreciate the convenience or environmental soundness of reusables. The study also identifies other ways to reduce packaging's environmental impacts, such as increasing the post-consumer recycled content, eliminating bleached paper, and making packages more easily recyclable. For example, switching from bleached paperboard envelopes with no

recycled content to envelopes made from 80% post-consumer recycled content would cut wastewater discharge by 81%, solid waste by 60%, and greenhouse gas emissions by 39%.

"Clearly, there are enormous opportunities for packaging improvements that offer both environmental and business benefits," said Ralph Earle, Director of the Alliance for Environmental Innovation. "Smart companies will seize those opportunities."

"When choosing a shipper," said Elizabeth Sturcken, Alliance policy analyst and author of the report, "individuals and corporations can now consider impacts on our environment along with price and service."

The Alliance is currently working with UPS on a project to identify ways to reduce the environmental impact of the air express packaging UPS supplies to its customers.



# Spurring Early Greenhouse Gas Reductions in the U.S.

By economist Dr. Daniel J. Dudek and attorney Joseph Goffman, both on EDF's Global and Regional Air Program staff.

**N**ow what? That question has been on the minds of environmentalists, business leaders, politicians, and many ordinary citizens around the world as they ponder the



T. Charles Erickson

Joseph Goffman and Daniel Dudek

outcome of December's climate summit in Kyoto, Japan (see story, page 1).

The results from Kyoto actually are quite remarkable. For industrial countries to meet their commitment to cut greenhouse gas emissions at least 5% below 1990 levels, starting in 2008, will be both a formidable and a promising task. Formidable, because if the U.S. were to continue with "business as usual," our greenhouse gas (GHG) emissions in 2008 could be 30% above 1990 levels. But also promising, because the strategies and technologies to accomplish the needed reductions are sure to promote a host of beneficial innovations.

The daunting nature of the challenge can be seen in the graph at right. If the U.S. remains on its current course and follows the upward curve of GHG emissions, it will have to make abrupt changes later to get its GHG emissions back down to the levels required by the Kyoto treaty in 2008-2012. Such abrupt changes are likely to be expensive, increasing the political resistance to complying with the treaty and limiting the choices we can make in response to the climate challenge.

## Greenhouse Gases Persist for Decades

The upward curve poses a serious environmental risk, too. Greenhouse gases do their damage by staying in the atmosphere for long periods of time, typically a century or more. That is why preventing their release in the first place is so important. Because

the climate treaty's limits do not begin to take effect until 2008, however, there could be ten more years of increased, unchecked GHG emissions, as shown by the upward curve. Those increased emissions represent more warming of the atmosphere.

For all these reasons, the best answer to "Now what?" may be this: Start cutting GHG emissions as quickly as possible, well before treaty obligations begin in 2008. A market-based approach long advocated by EDF—and built into the treaty itself—provides the tools needed to stimulate early reductions.

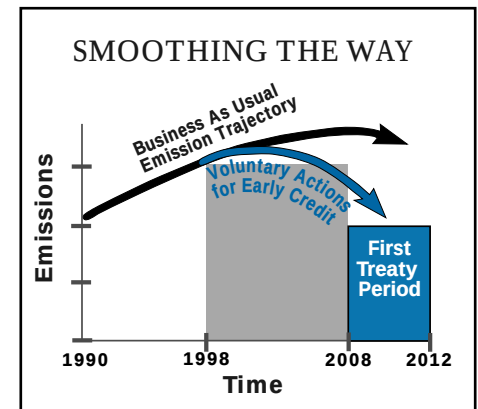
The climate treaty will create a worldwide market for GHG emission reductions. After 2008, companies and countries that can reduce GHG emissions more than required will be able to earn money by selling the excess reductions to those that face greater difficulty in making their own cuts. This creates a positive economic incentive for making extra reductions.

An identical economic incentive system can be put into place—and quickly—to stimulate businesses to make early reductions voluntarily before 2008. Under such a system, companies that find ways to make early reductions would earn GHG reduction credits that they could save and use later to meet their mandatory GHG reduction requirements. They could also sell the credits to other companies who might need them for the same purpose. Either way, such a program would offer financial value to companies who make GHG reductions today or any time before 2008. This would benefit the environment by providing the atmosphere years of relief from the gasses' effects.

## How it Worked for Acid Rain

The 1990 Clean Air Act's acid rain program shows how powerful such incentives can be in producing the early emissions reductions so critical to the battle against global warming. That program operates through a similar trading market to reduce emissions of sulfur dioxide (SO<sub>2</sub>), a major cause of acid rain. Electric power plants that reduce their emissions below the mandatory level during the program's first phase, between 1995 and 2000, can save those extra reductions to use or sell after the year 2000, when additional reduction requirements are fully implemented. As shown in EDF's recent study, *More Clean Air for the Buck: Lessons from the Acid Rain Program*, the incentives created

by this opportunity to profit from early reductions have led utilities to cut SO<sub>2</sub> emissions by about 35% more than required in 1995 and 1996. The incentives have also created competition among pollution-reduction methods, driving down the cost of the reductions to less than one-tenth of



the predicted cost.

The President and Congress can and should move quickly to create a voluntary program for early GHG reductions that would mimic the first phase of the acid rain program. Participants who chose to join the program would agree to keep their GHG emissions at a certain level. For example, a company could agree to offset any increase above present levels of emissions. For any GHG reductions they made below present levels, they would receive GHG reduction credits, which they could use to meet any future (post-2008) obligations. Under such a program, early GHG reductions would have tangible financial value—as do SO<sub>2</sub> reductions made between 1995 and 2000. Thus, companies who could make GHG reductions before 2008 would have a compelling financial reason for doing so.

An effective early reduction program would slow, and possibly even reverse, the upward climb of the curve shown in the graph. As a result, the U.S. economy's transition to the Kyoto treaty's limits on GHG emissions would afford a "soft landing."

Reducing greenhouse gas emissions in the next ten years not only benefits the environment, but also promotes the early discovery and use of technological innovations that ultimately benefit the economy. A voluntary program that delivers both economic and environmental benefits should command the support of the business community and of both political parties.

# EPA Bans Use of Toxic Herbicide Bromoxynil On Genetically Engineered Cotton Plants

The Environmental Protection Agency has banned the use of the herbicide bromoxynil on cotton genetically engineered to tolerate the toxic chemical. EPA said it acted "because of serious concerns about developmental risks to infants and children" from exposure to bromoxynil.

EDF has long worked to end bromoxynil use. There is evidence that the chemical causes birth defects, and studies suggest that it is also a carcinogen. EDF was particularly concerned that residues of bromoxynil and its metabolite, DBHA, on genetically altered cotton could get into cottonseed oil as well as foods such as beef, pork, poultry, and eggs from animals fed cottonseed meal. Bromoxynil in field runoff is also highly toxic to fish.

EPA halted bromoxynil use on cotton as of January 1. This is the first time EPA has stopped the use of a chemical on a crop



Andy Sack/Tony Stone

genetically engineered to tolerate it.

"EPA's decision is a major victory for environmentalists who believe that biotechnology should not be used to increase farmers' dependence on chemicals," said EDF scientist Dr. Rebecca Goldberg. "It is a strong signal to the biotechnology industry that genetically engineering crops to tolerate hazardous herbicides is not acceptable."

## Climate Agreement is Achieved in Kyoto

*Continued from page 1.*

"In the end, the negotiators set aside many of their differences for the sake of the planet," said EDF chief scientist and atmospheric physicist Dr. Michael Oppenheimer. Seven of the nine points that EDF considered critical for effective climate protection became part of the final agreement, including:

1. Binding limits on emissions.
2. Emissions to be reduced at least 5% below 1990 levels.
3. Reductions to occur by a specified time period, between 2008 and 2012.
4. Limits on all six significant greenhouse gases, not just carbon dioxide, methane, and nitrous oxide as some countries had proposed. (The other included gases are hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.)
5. Credits for enhancing carbon "sinks," such as forests, that actually remove carbon dioxide from the atmosphere.

6. Incentive-based mechanisms, such as emissions trading, to encourage early, cost-effective emissions reductions.

7. A provision, called the "Clean Development Mechanism," to promote greenhouse gas reductions in developing countries. Projects could be financed by industrial nations as a cost-effective way to meet some of their emission-reduction obligations.

More work will be needed on two critical issues that did not make it into the final agreement—a compliance mechanism with penalties for industrial nations that fail to meet emissions limits, and explicit commitments by developing nations to participate.

"The agreement represents a challenge to governments to turn the Protocol's good intentions into political reality," said Oppenheimer. "Efforts to strengthen it, including increased participation by developing nations, will be needed from the international community in the years to come."

### Leave Nature a Legacy!

By remembering EDF in your will, you can help protect nature's beauty and diversity for years to come. You will also help EDF find lasting solutions to problems that threaten the global environment and human health.

You can leave a bequest to EDF in your will or name EDF as a beneficiary of your living trust, life insurance, or qualified retirement plan. You or others can even receive income from an estate gift to EDF.

**For more information on methods of planned giving, please contact:**

**Anne B. Doyle, Director of Planned Giving,  
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(or by e-mail to: [doyle@edf.org](mailto:doyle@edf.org))**

## Congress Watch

By Steve Cochran,  
EDF Legislative Director



With Congress back in session, sponsors are pressing for action on their bills in



Steve Cochran

hopes of gaining passage in an election year. Unfortunately, several direct challenges to environmental protection are probable in bills that are coming up soon. EDF is working for more positive results.

**Superfund:** Committee work is scheduled on House bill H.R.2727 and a companion Senate bill. At press time, the bills still had significant problems, though prospects remain for genuine Superfund reform.

**"Takings":** We are fighting to stop a Senate attack on local and state control over land-use decisions, but the House has already passed a bill undermining such control. This issue could reach the President, who has indicated he would veto the House bill.

**Regulatory Reform:** Senate committee action is scheduled on S.981. As currently written, this bill would weaken Federal environmental, health, and safety regulations. Intense efforts are underway to improve the final bill.

**Transportation:** The nation's basic transportation law is before the Senate and scheduled for House action. An effective coalition has preserved many environmental protections in the current law, but efforts are underway to scuttle incentives to curb air pollution and shift more spending to new highways and away from transit.

**Endangered Species:** S.1180, introduced by Sen. Chafee, is still slated for floor action. The schedule is unclear, however, as Senators—reportedly including Majority Leader Lott—continue to negotiate on changes to the bill that cleared committee. EDF has proposed improvements which would increase the likelihood of restoring species—particularly on private lands—and strike troublesome features of the bill.

In the last month, EDF has presented well-received testimony in both the House and Senate outlining a market-based proposal to spur early greenhouse gas reductions by businesses (see story, page 4). EDF is also talking with the Administration about the need for early reductions in the U.S. and what actions they might take to promote climate-friendly technologies.

## Photographers Seek to Expose Our Forgotten Species

The museum at San Francisco's California Academy of Sciences is closed for the night. David Liittschwager and Susan Middleton wander through their darkened exhibit. From the still walls peer photos of a silent northern spotted owl, a giant West Indian manatee, an eastern indigo snake, and a greatly enlarged Pitcher's thistle, which—only a few inches tall in the wild—looms at a three-foot size behind Middleton.

"These," she says, gesturing to the more than one hundred magnificent portraits, "are the last of their species, plants and animals that have all but disappeared from North America."

"In fact, just a few blocks from here is the last known Presidio manzanita in its natural habitat," confides Liittschwager, pointing to a macroscopic image of a backlit manzanita leaf. With cloak-and-dagger

*When you're holding 20% of a species' future in your hands, you know it is something beyond value.*

tones, he adds, "But its exact location is kept a secret, to protect the species."

Liittschwager and Middleton are not biologists; they are photographers. For 12 years, they have combed the prairies, marshes, deserts, waters, and forests of North America, searching for what is left of the continent's endangered species. More often than not, their search leads them to laboratories and captive-breeding centers, which they have come to know as the "intensive care units" for ailing wildlife.

The next phase in their journey is an alliance with EDF that will include a study of Hawaii's endangered wildlife and a lecture tour to raise awareness of the plight of endangered species. Both EDF and the photographers hope in time to speed the species' safe journey out of intensive care and back into the wild.

"EDF can magnify the power of this work in a way that few other groups can," says Middleton. She remembers a presentation of their photographs for EDF's Board of Trustees, at which executive director Fred

Krupp announced, "We have purposefully brought together the best scientists, economists, and attorneys to further our mission. Now it is time to bring in the best photographers, whose work can touch people."

Liittschwager admits that emotions do play a part. "The first time I felt the gravity of this work, we were photographing Cutlip, one of five remaining, genetically distinct black-footed ferrets. When you're holding 20% of the ferrets' future in your hands, you know it is something beyond value." He motions to Cutlip's endearing portrait at the exhibit's entrance.

From the shadowy hall, footsteps echo and a uniform emerges. "Did you take that picture of the grizzly bear?" the museum's night watchman asks. "What was it like to be pent up with him?" Liittschwager recounts their rare photo session with the surprisingly gentle beast in Sequim, Washington.

Middleton later explains, "These images seem to resonate with people. People are hungry to feel a connection, but they feel so isolated from endangered species. We just hear about them as statistics."

Middleton, who grew up on the outskirts of Seattle, recalls her earliest connection with wildlife like the salmon in the creek running through her family's back yard. Her true passions, though, evolved toward contemporary art. She was working as a museum curator, photographing mummies and rare Hopi artifacts, when she met Liittschwager, a commercial photographer from Eugene, Oregon. Liittschwager's passion always had been photography, and he had shot everything from "toasters and tablecloths" to fashion models in New York City.

Though not partners in romance, Liittschwager and Middleton soon discovered a mutual passion that would bring both renown for their work and new hope for endangered wildlife. They published two books of endangered species photographs, *Here Today* (Chronicle Books, 1991) and *Witness* (Chronicle Books, 1994), and in 1995 they presented their work at



Dong Lin

Photographers David Liittschwager and Susan Middleton were featured in a recent National Geographic TV special on endangered species. (See video offer opposite page 4.)

U.S. Senate hearings supporting reauthorization of the Endangered Species Act. There they met prominent ecologist and EDF board member Dr. Jane Lubchenco, who was also testifying at the hearings.

"Through their talent, passion, and knowledge, David and Susan help us see these species in a fresh and compelling fashion," Lubchenco reflects. "Their arresting portraits speak to us directly and powerfully and change forever how we think about endangered species."

The portraits are indeed compelling, each revealing one or two individual survivors against a stark black or white backdrop—a lone Tennessee purple coneflower, a gopher tortoise with a sparkle in her deep black eyes. They speak volumes about the plight of the individuals and the species.

Yet in one way the photographs are strangely unnatural. As portraits, they isolate each species from the habitat it needs to survive in the wild. "We are trying to reveal an individual life," Middleton explains, "so we want to remove all distractions from the photographs."

But most endangered species are at risk precisely because their natural habitat is being destroyed. "We have to enhance and restore their habitat, to welcome them back into a more hospitable world," Liittschwager stresses. "That's where EDF's work is essential."

By Kurt Hupé



Cutlip, a black-footed ferret.

© Middleton/Liittschwager 1994



# New Accord Protects Native Americans' Water Rights

By Charles "Jody" Calica, General Manager, Natural Resources, Confederated Tribes of the Warm Springs Reservation, and Dr. Zach Willey, EDF economist in the Northwest.

Four generations have passed since European settlers came to the Oregon territory to farm, ranch, fish, and log. For countless generations before, the people of the Wasco, Warm Springs, and Northern Paiute bands of Indians had lived in the Cascade rainforests, the river basins of the Columbia Plateau, and the northern Great Basin desert. They were fishers and gatherers, subsisting mainly on Chinook salmon and huckleberries.

In 1855, Wasco and Walla Walla (Warm Springs) chiefs and headmen signed a treaty with the United States to secure their historic rights in perpetuity. The treaty reserved the Warm Springs Reservation, which encompasses a significant part of Oregon's Deschutes River Basin, for the Tribes' exclusive use forever. The Tribes ceded to the U.S. title to more than ten million acres, while reserving hunting, fishing, pasturing, and gathering rights on aboriginal lands for which they did not seek ownership.

On November 17, 1997, the Tribes signed another historic agreement, this time with

quantities that the Tribes are entitled to consume.

- Establishes minimum stream flows for the Deschutes and other major rivers needed for survival of salmon and other life.
- Recognizes that even larger minimum stream flows may be established in the future under Federal or state law.
- Protects existing and future tribal uses of water.
- Authorizes the Tribes to market a block of their water off the reservation.

The new accord establishes an innovative link between the environment and Indian water rights by focusing on stream flows rather than on "practicable irrigable acreage," the criterion traditionally used to quantify Indian water rights. It provides important lessons and new ideas for the many Indian water rights claims still unsettled.

## A Critical Time for the West

The 1997 agreement comes at a critical time. The Deschutes Basin is in many ways a poster child for the West's current problems and opportunities. Exploding population, mostly from migration, is driving rapid growth in the recreational, residential, and industrial sectors. Timber, agriculture, and ranching are in economic decline and under political assault. Wild species, most visibly the Pacific salmon, are teetering on the brink of extinction.



Mei Productions

Jody Calica and Zach Willey are working to preserve natural resources on the Warm Springs Reservation and throughout central Oregon.

both the U.S. and the State of Oregon. In settling the Tribes' treaty and aboriginal claims to water, the new agreement:

- Creates a framework for cooperative water management to protect fresh water supplies for salmon survival and other ecological purposes.
- Sets aside the entire flow of all streams on the reservation to "sustain or enhance the aquatic ecosystem," except for specified

agreed that Indian and non-Indian resource users alike need positive incentives, including market-based measures long supported by EDF, such as water marketing and tradable pollution discharge permits.

The gatherings strengthened the Tribes' stewardship efforts. By 1992, they had cut annual allowable logging in reservation forests by 50%, and have created an upgraded wood products marketing pro-

gram and other initiatives to offset short-term impacts.

Reaching out to the Basin's water users, EDF and the Tribes assembled an ad hoc group from the region's many economic sectors. Oregon's now-retired Senator Mark Hatfield wrote in his preface to the 1995

## EDF joined the Tribes in traditional longhouse gatherings.

joint report *Restoring the Deschutes Basin*, "the sensible methods, optimistic spirit, and cooperative, consensus-based nature of this report and partnership should be used as a model throughout the Northwest and anywhere that tension between economic and ecological values have divided rather than bound our citizenry."

It is important to acknowledge that water users often have strong environmental values, which often gets lost in the West's "water wars." Disagreements between environmentalists and irrigators often concern how, not whether, ecological goals are achieved. The Deschutes report's emphasis on "willing seller-willing buyer" transactions for ecological gains was critical for our collaboration with farmers and ranchers. An ecological milestone in the Basin is the leadership of several irrigation districts in voluntarily transferring water previously diverted from the Deschutes and Tumalo Rivers back to instream flows.

In 1996, EDF, with the Tribes' support, shaped the ad hoc group into the Deschutes Basin Resources Conservancy, a non-profit, consensus-based corporation whose 19-member board represents the Basin's economic and environmental sectors, the Tribes, and local, state, and Federal governments. The group's charter gives priority to voluntary, market-based economic incentives to restore ecosystems.

As our partnership enters its second decade, EDF and the Tribes continue to develop new initiatives, including a forestry project on tribal lands that aims to develop and market non-wood forest "products," such as carbon sequestration to help mitigate climate change. Tribal forest projects that include select wood as well as non-wood products are in the Tribes' economic interests as well as the region's ecological interests. We welcome further opportunities to pursue our shared goal of an economically prosperous and ecologically diverse 21st century.

# Common Global Environmental Standards Sought

EDF is leading efforts to improve environmental standards for government-supported export finance agencies, which annually support more than \$400 billion of foreign investments and exports. These agencies—export-import banks and investment insurance agencies—play a critical role in privately financed projects in developing countries and the former Soviet Union.

Many of these agencies lack adequate environmental standards. As a result, their investments in large power plants, dams, forestry development, mining, and big infrastructure projects can have huge negative environmental impacts.

EDF and other groups have helped improve environmental standards for the U.S. Export-Import Bank and the Overseas Private Investment Corporation (OPIC). The new standards require attention to the climate change impacts of their investments and increased support for “green” technologies such as alternative and renewable energy. OPIC and the Export-Import Bank also will track greenhouse gas emissions in their energy projects.

## A Race to the Bottom

Unfortunately, the environmental standards of many nations’ export finance agencies do not match those of the U.S. This disadvantages U.S. businesses and risks a “race to the bottom” where agencies compete to fund projects with lower and lower environmental and social standards.

For example, in 1996, the U.S. Export-Import Bank courageously refused to fund China’s environmentally destructive Yangtze River Three Gorges Dam, a project the World Bank also rejected. Later, however, Germany’s Hermes Guarantee approved \$800 million of loan guarantees for the project, and promises of loans and guarantees from agencies in Japan and several other European countries quickly followed.

EDF attorney Bruce Rich is leading efforts to change this situation by advocating common environmental standards for all nations’ export finance agencies. EDF is working closely with the U.S. Administration and its finance agencies, non-governmental organizations, and legislators in Europe and Japan. EDF was instrumental in getting President Clinton to call for common environmental standards in addressing the United Nations and getting the U.S. to put

the issue on the agenda of the G7 Summit of major industrial countries in Denver last year. That Summit led to a special meeting on the issue at the Organization for Economic Cooperation and Development (OECD), the principal forum for export finance agency representatives to meet and negotiate agreements on standards.

Agency representatives reportedly now fear that unless they make progress on common environmental standards their governments might eventually impose such standards on them. EDF is pressing to secure stronger standards at the 1998 G7 Summit in Birmingham, England.

“Although we still have an enormous task ahead,” said Rich, “EDF has helped catalyze first steps toward common global environmental standards for export finance agencies. Achieving our goal could influence hundreds of billions of dollars a year in private investments around the world.”



Sovfoto/Eastfoto

*Funders without adequate environmental standards are helping China dam the scenic Three Gorges of the Yangtze River.*



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## Proposed “Organic” Rule is Distasteful

Many supporters of organic agriculture are protesting a rule for certifying organic foods proposed recently by the U.S. Department of Agriculture (USDA). Objectionable USDA proposals include those allowing certain uses of pesticides, antibiotics, and genetically engineered crops in organic agriculture.

In a bow to conventional agriculture, the USDA ignored many recommendations of its own advisory panel, the National Organic Standards Board, which had conducted a five-year study of the organic issue. Moreover, USDA would forbid the use of alternative labels such as “produced without synthetic pesticides.” This would hinder the marketing of products that exceed USDA’s proposed organic standards and force many U.S. companies that now sell such products to stop differentiating them.

### EDF ACTION ALERT

EDF members can help by writing USDA before the April 30 deadline for comments. Ask USDA to rewrite the rule to follow recommendations of the National Organic Standards Board and ask them not to become arbiters of eco-labeling. (Write to Eileen S. Stommes, Deputy Administrator, USDA-AMS-TM-NOP, Room 4007-So., Ag Stop 0275, P.O. Box 96456, Washington, DC 20090; or via the web at [www.ams.usda.gov/nop](http://www.ams.usda.gov/nop); or by fax to 202-690-4632.)

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