



## Oversight of Agency Actions Affecting Invasive Species

*Finalized June 4, 2005*

Executive Order 13112 on Invasive Species (63 Fed. Reg. 6183-6186, February 8, 1999, as amended; hereinafter "Order") established the Invasive Species Council ("Council"). The Order establishes general Federal agency duties and exceptions and directs the Council to oversee implementation of these and other requirements of the Order (section 4(a)). This document provides guidance for oversight of these requirements and will be reviewed and revised on a yearly basis, as appropriate. This guidance fulfills the first recommendation (action item) under Leadership and Coordination in the first edition of the National Invasive Species Management Plan (Plan). It also partially fulfills the recommendations included in action items 2, 4 and 8 that deal with conflict resolution and reporting requirements. All efforts will be made to ensure that the reports required under this guidance are consolidated with other reporting requirements called for by the Plan or the Order.

### **Federal Agency Duties under E.O. 13112**

Section 2 of the Order establishes Federal agency duties and exceptions as follows:

- Sec. 2. Federal Agency Duties.** (a) Each Federal agency whose actions may affect the status of invasive species shall, to the extent practicable and permitted by law,
- (1) identify such actions;
  - (2) subject to the availability of appropriations, and within Administration budgetary limits, use relevant programs and authorities to: (i) prevent the introduction of invasive species; (ii) detect and respond rapidly to and control populations of such species in a cost-effective and environmentally sound manner; (iii) monitor invasive species populations accurately and reliably; (iv) provide for restoration of native species and habitat conditions in ecosystems that have been invaded; (v) conduct research on invasive species and develop technologies to prevent introduction and provide for environmentally sound control of invasive species; and (vi) promote public education on invasive species and the means to address them; and
  - (3) not authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species in the United States or elsewhere unless, pursuant to guidelines that it has prescribed, the agency has determined and made public its determination that the benefits of such actions clearly outweigh the potential harm caused by invasive species; and that all feasible and prudent measures to minimize risk of harm will be taken in conjunction with the actions.
- (b) Federal agencies shall pursue the duties set forth in this section in consultation with the Invasive Species Council, consistent with the Invasive Species Management Plan and in cooperation with stakeholders, as appropriate, and, as approved by the Department of State, when Federal agencies are working with international organizations and foreign nations.

Sections 6(c) and (d) of the Order state:

- (c) The requirements of this order do not affect the obligations of Federal agencies under 16 U.S.C. 4713 with respect to ballast water programs.
- (d) The requirements of section 2(a)(3) of this order shall not apply to any action of the Department of State or Department of Defense if the Secretary of State or the Secretary of Defense finds that exemption from such requirements is necessary for foreign policy or national security reasons.

It is likely that amendment of the Executive Order will also include an exclusion for the Secretary of the Department of Homeland Security if the Secretary finds that exemption is necessary for homeland security reasons.



### **Oversight Procedures**

Questions will be raised whether certain specific Federal agency actions are consistent with the requirements of section 2 and section 6 ("Federal agency duties"). The Council in turn has considered how it should respond in light of its policy oversight responsibilities. The Council believes that oversight should be accomplished by monitoring Federal agency implementation and by providing a means for exchanging information on this. In furtherance of these objectives the Council has agreed to the following:

1. **Invasive Species Reports.** By July 30, 2003, each member of the Council ("Member") should provide the Council Co-Chairs with a copy of the Member's Invasive Species Report (Report). The first edition of each Report will:
  - a. Include a description of how the agency will address the Federal agency duties of the Order.
  - b. Specify the name, title and address of the Member's designated contact for inquiries concerning invasive species and for the Member's participation in the Council.
  - c. Be posted on the Internet at <http://www.invasivespecies.gov>.

The Council will advise Federal agencies that are not Council Members on implementation of the Order, and will encourage them to prepare Reports and annual updates as described below.

2. **Annual Updates to Invasive Species Reports.** At the end of each Fiscal Year, Members should provide an update to the Invasive Species Report to the Council that includes:
  - a. a description of any significant changes to the Invasive Species Report prepared under section 1 above;
  - b. a summary of accomplishments relating to addressing invasive species issues;
  - c. a summary of significant issues and any issues raised about compliance with Federal agency duties under the Order and how they were treated;
  - d. a summary of any instances in which the agency found it necessary to rely on any of the exceptions in section 2 or section 6 of the Order, and the terms prescribed for invoking the exceptions; and
  - e. any other information that the agency wishes to share with the Council and the public.

Members will provide written materials addressing (a) through (e) to the Council for inclusion in the minutes of the next Council meeting. The materials provided will be posted on the Internet, at <http://www.invasivespecies.gov>, as a part of the posting of the minutes.

### **3. Public issue identification and response.**

- a. Any person who believes that an agency has taken or is planning to take an action inconsistent with Federal agency duties of the Order may apprise the Council of this opinion by submitting a written statement to that agency and by providing copies of the statement to the Council Co-Chairs. Such written statements shall describe (i) the action of concern, (ii) any damage the action is believed to cause, and (iii) any earlier communications about the action made to the agency concerned. Any person who contacts the Council Co-Chairs or any Member about the actions of another Member will be referred to the procedure above.
- b. Council Member agencies whose actions have been questioned under paragraph a. should respond to the commenter in writing and provide a copy of the response to the Council.
  - i. If the matter of concern is subject to a formal administrative process, the agency should provide a written response referring the originator to the appropriate public comment process, and direct the written statement received into that process.
  - ii. Communications with the Council will not substitute for public comment through Member agency provisions for public comment or public hearing on actions, nor will communications with the Council offer an additional opportunity for consideration of comments on actions, or a substantive right of action, except to the extent consistent with all applicable law.
- c. The Council may offer advice and recommendations to facilitate resolution of issues under this section.

4. **Judicial Administration.** This oversight procedure does not create any right or benefit, substantive or procedural, enforceable in law or equity by a party against the United States, its agencies, its officers, or any person or Council Member.