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TO: Colleagues

FROM: John Kostyack
Executive Director, Wildlife Conservation and Global Warming, National
Wildlife Federation, kostyack@nwf.org, 202-797-6879

RE: Adaptation Provisions of the American Power Act (Kerry-Lieberman Bill)

Last week Senators John Kerry (D-MA) and Joseph Lieberman (I-CT) released a discussion draft of the American Power Act of 2010. This was an important step on the path toward solving the global warming crisis. Along with H.R. 2454, the climate change bill passed by the House in June 2009, and S. 1733, the bill reported by the Senate Environment and Public Works Committee in November 2009, this discussion draft sets forth the most comprehensive program ever contemplated in legislation for protecting and restoring U.S. species, habitats, and ecosystems threatened by climate change and ocean acidification. However, as discussed below, the bill does not adequately fund this adaptation program. The conservation community must mobilize to ensure that Senate leaders support this program with a large-scale, dedicated funding stream paid for with the proceeds from the sale of pollution allowances.

Kerry-Lieberman's Domestic Adaptation Provisions

The domestic adaptation provisions of Kerry-Lieberman (entitled "Community Protection from Climate Change Impacts," sections 6001-11) are focused almost entirely on natural resources adaptation, i.e., protecting and restoring species, habitats and ecosystems threatened by the impacts of climate change. The only exception is a provision giving the EPA Administrator the authority to create additional adaptation programs focused on water systems, floods, wildland fires and coasts. Unlike S. 1733, which described such additional programs in detail and provided a share of allowance value to pay for them, Kerry-Lieberman leaves them undefined and unfunded. This gap should be addressed in future drafts of the bill.

The good news from Kerry-Lieberman's adaptation framework is that the natural resources adaptation policy provisions are virtually identical to those set forth in S. 1733. These provisions offer a comprehensive approach to protecting and restoring U.S. species, habitats, and ecosystems threatened by climate change and ocean acidification, an approach thoroughly vetted and strongly supported by the conservation and scientific communities. (Because I analyzed these provisions in detail in my November 5, 2009,

memorandum discussing S. 1733, I do not describe them here. The memorandum is available upon request.)

Senators Kerry and Lieberman should be praised for recognizing that any strong climate change legislation must deal with the effects of climate change as well as its causes. Their policy language on natural resources adaptation is exactly what is needed to confront the enormous threats to the ecosystems that support both people and wildlife in the U.S. Unfortunately, the bill does not provide the large-scale, stable funding commitment that is essential for implementing the natural resources adaptation program. Three changes to the discussion draft are necessary to meet this challenge.

1. *Substantially Increase the Share of Allowance Value*

Like previous climate change bills, Kerry-Lieberman provides for the annual issuance of pollution allowances to designated industry and agency sectors, and because the number of allowances declines each year, these allowances have a steadily increasing value. In enacting climate change legislation, Congress must ensure that this value is used effectively to help solve the climate crisis, including for actions to protect ecological systems threatened by climate change impacts.

Although no economic modeling has been done for Kerry-Lieberman, EPA's models for the somewhat comparable H.R. 2454 showed that annual allowance value ranged from \$56 billion in 2012 to \$100 billion in 2030. The House bill provided 1 percent to 4 percent of allowance value for safeguarding natural resources during this period, resulting in annual amounts ranging from \$.5 billion in 2012 to \$4.3 billion in 2030, or an annual average of \$1.7 billion.¹

Kerry-Lieberman provides a substantially lower share of allowance value to natural resources adaptation than H.R. 2454 and other prior climate change bills. For the first seven years of the program, it provides zero percent, and in the period from 2019 to 2034, the share of total allowance value ranges from .75 to 3 percent. See section 721(d)(1)(A). Based on annual estimates of allowance value provided by Senator Kerry's office (slightly higher than EPA's estimates for the House bill), zero dollars would flow from 2012 through 2018, and then the amounts would range from \$.7 billion in 2019 to \$3.5 billion in 2030, for an annual average of \$1.2 billion.

An appropriate level of funding – one commensurate with the gravity of threat that climate change poses to natural resources – would be 5 percent of allowance value. If this share proves to be politically unviable, the conservation community should at least insist upon a substantial increase beyond the Kerry-Lieberman percentages, especially during the crucial first decade of the program, given that many ecosystems are already

¹ S. 1733 provided slightly less, with an annual average of \$1.4 billion. Although its percentage shares of allowance value for natural resources adaptation were identical to H.R. 2454, it drew from a smaller total than the House bill.

impacted by climate change and at great risk of irreversible decline and many species are already at serious risk of extinction.

A Brookings Institution analysis of the Kerry-Lieberman allowance value distribution scheme makes clear that substantial funding would be available for natural resources adaptation under the draft legislation if the Senate were to make this issue a priority. See http://www.brookings.edu/opinions/2010/0513_poweract_gayer.aspx. For example, during the period in which natural resources adaptation receives no share of allowance value (2012 through 2018), the oil industry receives a share of allowance value ranging from 3.75 to 4.3 percent. If just half of this money were to be shifted to natural resources adaptation, roughly \$10 billion would be available during this seven-year period for protecting threatened U.S. species and ecosystems rather than the oil industry.

2. Clarify that Funding is Dedicated

Action to safeguard natural resources from climate change impacts can be taken only if funding is stable and secure and not dependent upon annual decisions by Congressional appropriators. Unfortunately, unlike S. 1733, which made clear that funding for natural resources adaptation was not dependent on future action by appropriators, Kerry-Lieberman is ambiguous on this point. (An exception is the 12 percent share allotted to the Land and Water Conservation Fund, which is clearly kept outside of the appropriations process.) The conservation community should insist that the language be amended to make clear that funds specified for natural resources adaptation are truly dedicated to this purpose.

3. Remove Language Targeting Natural resources adaptation Funds As Available to Solve Future Funding Shortfalls

Kerry-Lieberman contains two provisions designed to address the scenario in which the U.S. government makes funding commitments toward developing countries in international climate change negotiations and the amounts in the bill for this purpose prove to be inadequate. Section 721(d)(2) allows the President to shift allowances from domestic adaptation to international adaptation (or vice versa) based on a finding that such action would be in the national interest, taking into account the needs of vulnerable communities and U.S. obligations under international agreements. Section 797 allows the President to shift up to 5 percent of allowances away from any of the sectors that have received them under the bill for the purpose of addressing international commitments on adaptation, technology transfer, and deforestation.

The conservation community should press for the removal of section 721(d)(2). Although it may make sense to give the President the ability to tap into additional funding needed to fulfill commitments made in international treaty negotiations, it makes no sense to suggest that the relatively tiny natural resources adaptation account should serve as this reserve. Section 797 takes a different and more sensible approach, providing the President with the needed financing without specifically targeting natural resources adaptation funds.

Kerry-Lieberman's International Adaptation Provisions

The international adaptation provisions of Kerry-Lieberman (section 5005) create an essential program for helping vulnerable developing countries cope with climate change impacts. Unfortunately, like the domestic adaptation program, this program is badly underfunded. In fact, international adaptation receives a share of allowance value that is identical to domestic adaptation. Considering that people in developing countries contributed least to the global warming problem and are bearing some of its most severe impacts, a significantly larger share of allowance value should be allocated to this assistance.

Kerry-Lieberman's Mitigation Provisions

My colleagues at NWF and partner organizations are circulating more in-depth analyses of Kerry-Lieberman's mitigation provisions, including analyses of the need for additional natural resources safeguards in the provisions on biomass and other energy development incentives. It is worth noting that Kerry-Lieberman includes some protections for wildlife and habitats in its offsets provisions and it includes promising measures to promote storage of carbon in forests and soils, which would have substantial benefits for wildlife and ecosystems in both the U.S. and abroad. However, these latter measures are unfunded; funding from the pool of pollution allowances will be crucial to ensure successful implementation.