The latest Delta report issued by the Public Policy Institute of California goes well beyond the Delta. Titled Managing California's Water: From Conflict to Resolution, the report takes on the entire water management structure set up by state and federal law. There's a lot in the report, which should be required reading for anyone interested in California water management, or more generally in the tensions between environmental protection and resource exploitation.

Perhaps because of its broad scope and ambition, though, some parts of the report are poorly thought out or presented. Unfortunately one of those areas of weakness, which is getting national attention, feeds right into anti-Endangered Species Act political rhetoric and is likely to inhibit rather than promote the conversation that is needed.

The problem area I'm talking about is the report's advocacy of endangered species triage, the suggestion that we should make it easier to relinquish our commitment to save every species from human-caused extinction. That suggestion quickly brought an outraged response from Peter Gleick of the Pacific Institute, which in turn inspired Andrew Revkin to halfheartedly endorse triage in his DotEarth blog and Cynthia Koehler of Environmental Defense Fund to point out that there already is a carefully calibrated mechanism for triage in the ESA.

To be fair to the report's authors, they have not exactly called for triage, at least not yet. In fact, they describe triage as "an ugly idea" which "should be invoked only after extraordinarily careful analysis and under powerful regulations." (p. 246) But what they have said is both confused and confusing. They do suggest that triage will be needed in the future, and they don't make any serious effort to flesh out the analysis that should precede it or the ways in which it might be limited.

Perhaps the authors themselves are conflicted about the possibility of triage, or the eight of them hold differing views. Whatever the cause, this part of the report needed more work before its release. Academics that they are, the report's authors (many of whom I know and admire) have been playing in the policy world long enough that they should have anticipated that their words could (and would) be oversimplified, taken out of context, and used to promote legislative "fixes" that are anything but "eco-friendly" (the goal the authors say they are trying to achieve in the Delta).

The report's discussion of triage is confused because it fails to separate two very different issues.

The first is the difficulty of saving all species in a highly modified and rapidly changing

world. The report notes that layering climate change on top of the historic disruption of the Delta system means that some species, including the Delta smelt and Sacramento River Chinook salmon "may be destined for extinction as self-sustaining wild species despite heroic efforts to save them." (p 245) The obvious implication is that we shouldn't waste our time and efforts. That will be music to the ears of diverters, who have already been arguing that they shouldn't have to give up water in a futile bid to save the Delta species.

But then in its criticism of the Endangered Species Committee, the ESA's safety valve designed for just such circumstances (popularly known as the "God Squad"), the report turns to a very different issue, the potential for conflict between the conservation of one species and another, or of one species and an ecosystem. Such conflicts can occur. In the Everglades, for example, releasing water for the benefit of the snail kite can mean inundating the nesting habitat of the Cape Sable seaside sparrow. In the Klamath Basin, the endangered suckers seem to need more water retained in Upper Klamath Lake, while the threatened coho would prefer higher flows in the river. Appealing to these sorts of examples, the report argues that "in the future," a new version of the God Squad should be given the freedom to authorize the extinction of some species in order to conserve others or the ecosystems as a whole. (p. 247)

The issue of conservation conflicts between species is, frankly, out of place in a discussion of the Delta. So far as I'm aware (or the report reveals) there is no such conflict in Delta management. No one contends that the restrictions on water diversions that have caused so much litigation and controversy are harming the broader Delta ecosystem in order to save smelt or salmon, or that we can't avoid choosing between smelt and salmon.

Even where interspecies conflicts occur, the issue is typically a non-sequitur used to divert attention from human over-exploitation. If people weren't taking so much water out of the Klamath River system, the suckers and coho could peacefully co-exist. If most of south Florida hadn't been drained to accommodate cities, the water needs of the kite and sparrow could be met in separate locations. The problem is never that saving one species is flat-out inconsistent with saving another. It's that saving both, or an entire system, requires greater economic sacrifice than just saving one.

Setting that issue to one side, it is true that in the Delta and many other systems we may not be able to save everything and we may need to rethink our conservation goals. I give the PPIC authors credit for raising this issue, which is a tough one for environmentalists to talk (or even think) about. I've written about it for a symposium in the San Diego Journal of Climate and Energy Law (the abstract and, if you have access to SSRN, the full paper, is available here). If scientific estimates are close to the mark (and especially if we persist in

delaying serious mitigation efforts), climate change will put something like one-fourth of our species at risk of extinction in the next century. It seems quite likely that it will be literally impossible to save all of them from extinction. The political pressure to make triage easier will inevitably ratchet up as the numbers of listed species increase, bringing more and more conflicts with economic activity.

The real problem I have with the report's treatment of triage is that, having raised the issue, they don't do the hard work of grappling seriously with it. Environmental law, and especially the relatively rigid requirements of laws like the ESA, performs an important precommitment function, deliberately making it difficult for us to turn from our conservation goals when faced with economic inconvenience. Without that kind of check people are only too likely to seek the easy way out, to overestimate the costs of conservation (as we have consistently, for example, overestimated the costs of pollution control), and to give up on species that could actually be saved for projects of relatively little value.

Because it's human nature to take full advantage of flexibility to our own later dismay, no one who believes in conservation should talk about introducing more flexibility into our conservation laws without also talking about the need to use all the policy tools we have to reduce stresses on ecosystems; the need to ensure credible evaluation of whether species are too far gone to save and why; and the perverse incentives that any easing of the exception process would provide for further delays in listing and against early or robust conservation efforts.

We already have a safety valve in the ESA, the God Squad process. It's tough to invoke for good reason. So far, it's protected us against carelessly letting go of species whose conservation turns out not to be as difficult as its been painted. Maybe we'll need a more general or proactive form of triage in the future. Certainly we should be willing to talk about that possibility.

But responsible triage would have to be done in a way that doesn't provide an easy way out. Designing a system that allows some change without letting us off the hook altogether is far more difficult than the report lets on. It can't be done by asking a committee of politicians to make trade-offs between species or between species and ecosystems.

And it sure can't be done by the kinds of legislative proposals we're currently seeing, to do things like prohibit implementation of the Delta BiOp or legislatively delist the gray wolf. To the extent it inadvertently fuels those sorts of efforts or the rhetoric used to justify them, this report does a disservice to efforts to address the real and difficult conservation problems we face in the 21st century.