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(202) 225-2171September 25, 1992  
Jolene Unsöld**Species by Species -- Not Good Enough**

The Endangered Species Act listings of the spotted owl and certain salmon runs in the Northwest have become a national lightning rod for conflict between economic development interests and environmentalists. Efforts to find the so-called "balance" between the two raises enormously complicated issues: The entire Pacific Northwest is affected in both cases, and a wide range of human activities affect these species. The issue is further complicated by the politics of division that attempt to paint these debates as "jobs vs. endangered species" or "people vs plants and bugs," or as the President said during his recent visit to our State, "It's time to make people more important than owls."

**Early Warning**

Before examining the topic at hand, let's have a brief look at how we got to the crisis currently facing us.

"For 50 years we have been converting old-growth forests to young stands managed for efficient production of wood. Increased cutting levels during this time has increased the rate of liquidation of old-growth forests on the unreserved forest land base. The silvicultural practices adopted early in this program, such as dispersed patch clearcutting, reflected our management objectives and level of scientific knowledge at that time. Although we have refined the particulars of these forest practices the basic approach remains largely unchanged." [Jerry Franklin, May 10, 1990, before House MM&F, Ag, and Interior Comms.]

Jerry went on to say:

"Circumstances have changed dramatically in the last twenty years both in terms of broadened social objectives and our level of ecological knowledge about forests. As a result of studies sponsored by the National Science Foundation and USDA Forest Service we have come to realize that old-growth forests are biologically diverse and vital ecosystems. . . . At the same time we have discovered the intensively managed forests designed to maximize timber production often have serious limitations in their ability to provide for other resource values. . . .

". . . . We have been reluctant to respond to the mounting evidence that many non timber values, including biological diversity and long-term ecosystem productivity, are increasingly at risk with current management strategies. . . .

"We have attempted to deal with resource conflicts by dividing up the pie, allocating some forest lands to intensive management and others to preservation. This will not do the job. We cannot adequately protect biological diversity with parks, wilderness and other set-asides alone; sufficient acres are not available and they are not well distributed in terms of geography and ecosystem types. . . .

". . . . Programs which are oriented to single resources, whether they be wood-centric, as in the past, or owl-centric, are not appropriate. Management programs must have an ecosystem perspective with a goal of integrated management of all resources including timber, the multiple elements of biological diversity, water, and fisheries. Sustainability of all of these elements and the stability of the forest ecosystems and human communities which depend upon them must be the goal. Changes in attitudes and in management procedures . . . are essential to achieve that goal."

(Jerry began saying these things a couple of years before there was any decision by Judge Dwyer. Unfortunately, it has taken us a long time for the political process to begin to catch up with him.)

## I. Background

By way of background, it is important to note that the basis for the litigation and injunctions affecting most of the old-growth timber in the Pacific NW is not the Endangered Species Act, but rather the viability requirements of the National Forest Management Act.

And it is important to start off by putting in perspective the role that the Endangered Species Act -- as opposed to a threatened species, the northern spotted owl -- has played in the current conundrum paralyzing much of the rural Pacific NW.

Some would like, in this political year, to make the northern spotted owl the feathered Willie Horton of this campaign.

As was made clear during the President's recent trip to Washington and Oregon, there are those who intend to use the Endangered Species Act as a "wedge issue" to rally votes in November.

What stands in the balance now, however, is not how many acres to cut vs. how many acres to protect.

And my purpose today is to wrestle less with the politics of the owl, the marbled murrelet, the salmon, and other threatened or endangered species that may lurk on the horizon -- a difficult task for a politician -- but to deal, instead with the substance of the old-growth issue as it affects the region and the elements needed to construct a sound solution to this crisis.

In so doing, I'm going to:

1. Discuss some inadequacies in the Endangered Species Act and its implementation that have added to the problems we face in the region;
2. Suggest some of the failings in the way in which national forest and BLM management of the public forests of the region have exacerbated the current crisis; and
3. Identify the critical elements for a long-term solution to begin to find our way out of this morass and bring about constructive change in the management of our forests, the economies of our northwest communities, and the lives of those who have been caught in this destructive debate.

## II. The Endangered Species Act -- What It Is and Isn't

It is important first to set the record straight on issues associated with economics and economic concerns as they relate to the Endangered Species Act (ESA).

The ESA does not preclude the consideration of the economic effects of an endangered or threatened species on the economy of a region.

What the ESA does is carefully differentiate between the process for making a decision to list a species as threatened or endangered -- which is and should be a biological determination -- and the process for determining how to provide for the recovery of the species, or not to do so, as the case may be.

The ESA includes mechanisms to weigh the economic effects of alternative approaches to recovery in development of a recovery plan.

In fact, the Recovery Team for the northern spotted owl included economists as well as biologists -- principal among these was USDA Deputy Assistant Secretary John Beuter. They signed off on the recovery plan that was presented to Secretary Lujan, but ultimately ignored.

In addition, the "GOD" squad (Endangered Species Committee) procedure provides for exemptions from the requirements of the ESA for activities where "reasonable and prudent" alternatives do not exist. Again, in the case of the Bush administration's efforts to invoke the GOD squad to obtain exemptions for specific BLM timber sales, even his own Cabinet Members could not concur in the need to grant the exemptions requested.

At this point I am hopelessly incapable of resisting the urge to quote from the decision by Judge Dwyer that said among other things, "Had the Forest Service done what Congress directed it to do, adopt a lawful plan [for recovery of the spotted owl] by last fall [of 1990], this case would have ended some time ago."

Reading further: "The problem here has not been any shortcoming in the laws, but simply a refusal of administrative agencies to comply with them. This invokes a public interest of the highest order, the interest in having government officials act in accordance with the law."

How can we critique a law that is not being followed?

More important, what's behind this disregard for the law? We know the Administration prefers the so-called "Lujan preservation plan" which would cause the owl to go extinct in two-thirds of its area in Washington. And we know that it adopted within its party platform a proposal to require that Congress formally approve every ESA listing.

I want to go on with Judge Dwyer's decision, because it points out what I believe is the fundamental problem underlying our ESA concerns.

Quoting: "More is involved here than a simple failure by an agency to comply with its governing statute."

That statute, by the way, is not the ESA, but the National Forest Management Act.

Later in the same decision: "The most recent violations of the National Forest Management Act exemplifies a deliberate and systematic refusal by the Forest Service and the Fish and Wildlife Service to comply with the laws protecting wildlife. This is not the doing of the foresters, rangers, and others at the working levels of these agencies. It reflects decisions made by higher authorities in the Executive branch of government."

Translation: Had the administration acted in good faith to enforce existing resource management laws -- laws already on the books to maintain sustainable populations -- we might not be in the mess we are in today. Harvest reductions were inevitable because existing levels of cutting were unsustainable. But changing unsustainable management practices before the listing of the spotted owl -- as current law requires (NFMA) -- would have allowed a more gradual transition and avoided the current economic crisis. By failing to comply with the law, the ESA -- a tough law designed as the last line of defense -- is triggered. Is this a problem with the ESA?

Having said this, I believe that all would agree that modifications -- no, improvements -- in the Act and its implementation are needed.

This brings me to the clear "Achilles heel" of the Act. It makes no sense to have a species start falling off the edge of the cliff before the bells and whistles go off and then we concentrate all our energy and resources to the exclusion of any other value or creature to put that species back up on the cliff.

ESA serves as the "last resort" for protecting threatened or endangered species. As the safety net against extinction, ESA is designed and is implemented to provide for the protection of each species which is determined to be threatened or endangered on a species-by-species, individual-by-individual basis -- largely to the exclusion of other resource values or interests or the broader needs of the associated ecosystem.

This species-by-species approach, by its nature, is more inefficient -- from an ecological and economic perspective -- than an approach that provides for the consideration of multiple species or more important, the habitat of species -- on a broader scale.

Efforts to protect the northern spotted owl provide an excellent example.

Even before the northern spotted owl was listed as threatened, efforts to provide for its protection were limited to just that -- protecting the owl and limiting the economic effects of protection strategies on other resource values (like timber).

So, when the Interagency Scientific Committee (also known as the Jack Ward Thomas Committee) was chartered by the administration to develop a plan to protect the owl, the scientists involved were constrained to come up with a plan to protect the owl. As a result, they designed a system of reserves and changes in management that would address the owls' needs, but did little or nothing to address the larger needs of the marbled murrelet or threatened salmonids.

The scientists involved recognized this constraint, but were themselves constrained by politicians and administrators who sought to limit the "damage" that a solution to the owl crisis might cause.

The problem was that the scientists were asked the wrong question. Instead of being asked, "How do we protect the owl?" the appropriate question would have been, "How do we protect the ecosystem with which the owl is associated?"

The same mistake was repeated in developing the Recovery Plan for the Northern Spotted Owl, which was presented in draft to Secretary Lujan, but was instead ignored in lieu of the "preservation plan" announced by the Secretary in May of this year.

In both instances -- and "in spades" for the preservation plan -- in an effort to do only what was required to comply with ESA and to minimize adverse effects on timber harvests, the plans provided only for the owl with little or no regard for other species likely to be or already listed as threatened or endangered.

This is the wrong way to resolve the problem we face. It is inefficient, incomplete, and destined to failure for a resource problem the size and scope of what we see before us in the Pacific Northwest.

Put simply, it fails to resolve the potential problem of the "endangered-species-a-month club" which threatens the region.

I believe we need to reform existing agriculture, forestry, fisheries, coastal zone, grazing, and water policies. This requires removing those incentives that promote unsustainable use, and reforming policies to promote sustainable use. We saw it described (and incidentally promoted by Senator Al Gore) at the recent Earth Summit as sustainable development -- a realization that we can properly manage our resources without damaging our economy, and vice-versa.

For example, we have succeeded in doing this in pollution control where the emphasis has shifted from end-of-the-pipe regulation to pollution prevention -- a concept originally fought by industry. Yet, the benefits of pollution prevention are now being seen in improved environmental quality and, in many instances, corporate profits.

We need a similar shift in our resource management policies -- from the current species-by-species approach to a more proactive, sustainable ecosystem approach that makes development planning more predictable and recognizes the full range of economic values associated with natural resources.

Procedural improvements in the ESA are contemplated by Chairman Gerry Studds of the Merchant Marine Committee and others who are supporters of the ESA that would provide for a consideration of means to protect the ecosystems of endangered species, before the failsafe mechanism we now have in place kicks in.

The mechanics of such an approach are likely to be complicated, and this will take time to resolve. However, the common sense approach to dealing with the root cause of the problem -- that an ecosystem upon which a species of animal or plant depends is at risk -- warrants the investment that is needed.

### **III. The Failings of Forest Management and the Species-by-Species Approach**

I noted in my opening remarks that the injunctions which Judge Dwyer (a Reagan appointee, nominated by Senator Gorton) placed on timber sales in the Pacific NW were not based upon lawsuits brought under the ESA but rather the National Forest Management Act (NFMA).

NFMA includes a provision in law (Section 6(g)(3)(B) to "provide for diversity of plant and animal communities".

This provision was translated, by regulation, into a requirement to maintain viable populations of animal and plant species. And this has been the basis for legal challenges to the adequacy of the Forest Service's land management plans with regard to the northern spotted owl.

My point in raising this issue is simply that a broader standard for protecting animal and plant species before they reach threatened or endangered status already exists in law.

This standard should serve as the first level of protection afforded to species and ecosystems by law, before falling through to the final safety net -- the ESA.

But clearly, this first line of defense failed in the case of the northern spotted owl. At least, the court feels convinced that this standard has been breached.

What went wrong? How did we permit management to blow right by the viability standard to the point where the owl qualified for listing as a threatened species?

I would submit that the answer is that our management systems -- the way we manage forests -- has suffered from the same single dimension mind set that serves to work to the clear detriment of the ESA.

Although existing statute requires management for multiple-use and forest planning, by statute, is to be "integrated" [Sec. 6(b) of NMFA], we're not there yet.

Management still stresses timber over other non-commodity resources, plans still emphasize the achievement of single purpose goals -- be they board feet or days of recreation, and the relationship of one resource to another (like fisheries to timber) is measured more in terms of how one constrains the ability to achieve whatever the desired goal, or target for the other, may be.

Part of the reason for this is that it is simpler to measure outputs like timber than it is to quantify and monitor things like stream habitat improvements.

Another reason is that we don't really understand the relationship between, say, a type of timber harvesting system and the amount of siltation it might cause. We certainly haven't figured out how to quantify these relationships and use them as guidelines for how we manage these resources.

In the face of this complexity, therefore, we take the simple approach of managing resource by resource, species by species.

It's a simple approach -- SIMPLE AND WRONG!

#### IV. The Way Out of This Morass

A species-by-species, resource-by-resource approach to management won't do anymore.

It's too inefficient, it's too costly, and, one might question whether it's not illegal -- at least not in full compliance with the requirements for viability and sustainability of current forest management law.

What then can provide us some direction out of this morass?

I would suggest that the recent efforts of the so-called "Gang of Four" provides the framework and the foundation.

This group of scientists -- John Gordon of Yale University, Norm Johnson of Oregon State, Jerry Franklin of the University of Washington (and formerly the Forest Service) and Jack Ward Thomas with the Forest Service in LaGrande, Oregon, were asked by the Agriculture and Merchant Marine and Fisheries Committees of the House of Representatives to help identify alternative means of protecting late successional forest ecosystems.

The request was made to help identify alternative ways of resolving the spotted owl/old growth controversy.

The response of the group, developed through consultation with leading experts in the field and with the assistance of forestry and fish and wildlife personnel from every affected national forest and BLM district in the region, was a set of 14 alternative management schemes.

management schemes.

Each approach provided for a mix of areas reserved from timber harvest with changes in the management practices of the non-reserve lands to achieve different levels of protection for old-growth, owls, and other old-growth associated species, including fish. And, of course, each approach had a different impact on timber sale levels, revenues, and timber-related employment.

The scientists involved didn't recommend an alternative. Instead they laid each out, with an assessment of the effects each would have on the viability of the old-growth ecosystem, spotted owls, marbled murrelets, other old-growth associated species, and fish habitat.

They then presented this information to the Committees and said, "Here, you choose the proper alternative -- depending on the levels of risk you are willing to accept for different resources and for the communities and people affected."

This was a novel approach to the problem. It has clearly set a new standard for how to evaluate alternative solutions to this dilemma.

Any of you who would like more information on this study can contact my office, or Jim Lyons, staff for the Committee on Agriculture, who coordinated the Gang of Four effort, and who helped me with this draft.

Most important, this approach asked the right question -- "How do you provide for the management of the old-growth ecosystem to provide for a range of desired outcomes, and what are the consequences?"

The study was not constrained by a focus on owls or timber, but instead was intended to provide alternatives that were integrated, and coordinated, so that the effects on multiple species, the ecosystem as a whole, and people could be properly evaluated and judged --

Not by the scientists, but by the policy makers -- by Senator Gorton and folks in the House of Representatives and the Northwest delegation like me.

This approach could, and should, provide the basis for a solution to this issue. The Gang of Four report did, in fact,

serve as the basis for a bill that was reported by the Committee on Agriculture in May -- the only old-growth bill reported by a Congressional Committee thus far -- although I do have a State experimental forest bill that has passed the House.

Unfortunately, other imperatives have impeded progress toward achieving such an integrated, scientific, and ecosystem based solution thus far.

#### V. Summary

I will summarize by offering my thoughts on what it will take to resolve the old-growth/spotted owl conundrum -- most likely in the next Congress.

1. First, any solution must be comprehensive -- it can't just deal with owls, or old-growth, or murrelets, or fish in isolation. This is too inefficient and ultimately too unwieldy to serve as a real solution. Remember the Willie Horton analogy -- simple answers are simply wrong!

2. It must be coordinated. I only alluded to this in my remarks, but we must come up with a solution that provides for coordination between the BLM and the Forest Service, and the Fish and Wildlife Service. If the managing agencies can't be brought together to resolve this, I hold no hope for resolution.

3. Third, the solution must be based on and founded in sound science. The courts have made it clear that this standard will be used to judge the validity of any proposed resolution. This is as it should be if any proposal really is to resolve the issue.

4. Fourth, it must be region wide in scope and ecosystem driven. Ecosystems, like owls, know no geopolitical boundaries. A comprehensive solution must be founded on this principle and recognize the interdependence of the states, the public lands, and their management.

5. Finally, the solution must be for the long-term. This crisis is as much a crisis of timber supply as it is of owls and old-growth. A void will exist where the old-growth runs out and the second-growth, now coming of age on private forest lands throughout the region, is not yet available for harvest. A solution must therefore incorporate measures to aid communities

through that transition period and to diversity their economic base so that communities no longer live and die with the market cycles for timber.

I will close by saying that a new management paradigm is what's needed to guide forestry in the region for the next century -- one that embodies the concepts I have just articulated.

A species-by-species, resource-by-resource management scheme no longer works. We have run out of new resource frontiers. There are more people in the region, demanding more from our resources, and increasing the level of conflict and competition for these increasingly scarce resources.

We cannot deal with these conflicts unless we have some idea of how the pieces fit, how one action affects another, and how the use of one resource affects the health of another. This requires that we finally put in place the multi-disciplinary, integrated approach to forest management that is required by existing law.

Most important, this new management paradigm must recognize that people are a part of these ecosystems and a critical component in the management schemes we devise.

Too often, people, their needs and values, and the needs of their communities have been viewed in isolation from the resource.

An integrated system of management must take people into account, recognize them as a part of the system we seek to address, and a potential element in the solution to our current conundrum, not simply another part of the problem.

If we succeed in viewing the old-growth/spotted owl issue in this context, we might then provide the basis for working together to achieve an equitable, efficient, and long-lasting solution to this dilemma.

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