

FOIA MARKER

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Endangered Species

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I. Topic/Problem

Should the Endangered Species Act be continued more or less as is, strengthened to give greater protection to species threatened with extinction, or weakened to reduce its impact on jobs and the economy? Environmentalists regard the Act as one of the most important environmental laws because the harm it seeks to avoid, extinction, is irreversible. They believe the Act has worked well, though the meager resources available to implement it have limited its successes. Some business interests think the Act is unreasonable, imposing heavy and unjustifiable costs on development and other business activities.

II. History of Problem

The Endangered Species Act was passed nearly unanimously by Congress in 1973. For most of its history, major conflicts between species conservation needs and other social objectives have been almost non-existent. The first major exception was the conflict in 1978 over Tellico Dam and the endangered snail darter. As a result of that conflict, Congress amended the Act to create the "God Committee" process as a way of exempting worthy federal projects from the requirements of the Act. Since 1978, relatively few significant conflicts occurred until the spotted owl controversy erupted in 1989. Clearcutting of "old growth" forests on federal lands in the Pacific Northwest threatens the survival of the northern spotted owl. A series of lawsuits (most based on laws other than the Endangered Species Act) has resulted in injunctions that have reduced the amount of timber available for sale from the region's federal forests. Congress is considering several bills to resolve the old growth controversy. Some would establish a sizeable system of "old growth preserves" to assure conservation of the owl and other old growth-dependent species. Others would emphasize maintaining timber harvesting opportunities at predetermined levels, regardless of their conservation consequences.

The spotted owl controversy has been so volatile and has gotten so much attention that it has colored general perceptions of the Endangered Species Act. Potential conflicts on the horizon are seen as becoming "another spotted owl." Among those in this category are the listing of several salmon runs in the Northwest (potentially affecting hydropower operations, barge transit, and forestry practices), the possible listing of the California gnatcatcher (affecting real estate development in southern California) and the possible listing of San Francisco Bay's delta smelt (affecting the availability of water for agriculture). Critics of the Act argue that it places the interests of other creatures ahead of human welfare, sacrificing jobs, community stability, and economic progress on the altar of species conservation. Environmentalists argue that the Act is a safety net that has been called into play only when other laws (like those governing the management of federal forests) have failed, that the Act properly forces society to consider its long-term interests in sustainable environments, and that major conflicts are still the exception rather than the norm.

III. Current Status/Recent Developments

The existing authorization of appropriations to implement the Act expires September 30, 1992. Several bills to reauthorize or amend the Act have been introduced in the House, including one supported by environmentalists, H.R. 4045 with 94 mostly Democratic sponsors, and several bills that would weaken the Act. No bills have yet been introduced in the Senate. Both chambers also are considering various old growth forest bills. The Administration has not yet given its support to any of the Endangered Species Act bills, although its preferred approach to the old growth controversy is contained in a bill recently introduced by Senator Gorton.

In May, the God Committee voted to exempt from the requirements of the Act some 13 timber sales on BLM lands in Oregon. The practical effect of this exemption is slight since the sales in question are currently enjoined as a result of non-ESA concerns and the area affected is small in any event. Perhaps more significant is the fact that this represented the first time that the God Committee had been convened since 1979.

IV. Major Predictable Events in Next Few Weeks/Months

Most observers expect that there will be an effort by timber industry supporters to force a vote in the Senate later this summer (perhaps late July or early August) on an appropriations bill rider that would guarantee a given level of timber harvest from federal lands and effectively waive the requirements of the Endangered Species Act and other environmental laws. Proponents of the measure will seek to characterize the vote as one of jobs versus owls.

The various critics of the Endangered Species Act have yet to coalesce around any one bill in Congress. It is likely that a new bill will be introduced that seeks to united the diverse interests critical of the Act.

V. Key Issues and Analysis

Issue: Whether the Act takes adequate account of economic impacts.

Analysis: The major complaint of the Act's critics is that it lacks "balance." They argue that it puts species conservation concerns ahead of all others and deems economic and social costs associated with species conservation irrelevant. In practice, however, virtually none of the thousands of federal projects scrutinized each year for their impacts on endangered species are blocked. The overwhelming majority either go forward as planned or are modified slightly to avoid harmful effects. For those few projects that present irreconcilable conflicts, the God Committee process that Congress created in 1978 is available.

Issue: Whether the Act unduly restricts the use of private property.

Analysis: The Act can affect the use of private property because of its restriction against "taking" wildlife and the fact that significant habitat

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modification can violate this restriction. The "wise use" movement and other property rights advocates contend that the Act unconstitutionally deprives property owners of their rights under the 5th Amendment. Despite this rhetoric, however, there has apparently never been a claim filed against the United States by any property owner seeking compensation for property taken by operation of the Act. Moreover, since 1982, the Act has authorized the issuance of "incidental taking permits" that allow for the taking of endangered species in the course of land development and other activities. Through this mechanism, planning that reconciles local growth objectives with species conservation needs is being successfully carried out in many communities.

Issue: Whether the Act is working effectively to protect species.

Analysis: In the nearly twenty years since the Act was passed, only a few species have fully recovered and been taken off the endangered list. Critics argue this proves the Act has been a failure. Environmentalists contend this overlooks the significant progress this is being made by many species that are still endangered, but on the road to recovery. Examples include the bald eagle, peregrine falcon, and whooping crane, all of which are more numerous now than at any time in the past two decades. Other examples include the California condor, black-footed ferret, and red wolf, all of which have been successfully raised in captivity and experimentally released back into the wild. Environmentalists contend that the major failing of the Act is the inadequate funding it receives (about \$45 million currently for the core program of the U.S. Fish and Wildlife Service).

VI. Likely Questions and Draft Answers

Q. Does the Endangered Species Act place too high a priority on protecting other species and not a high enough priority on protecting American jobs?

A. It is rarely the case that we must choose between jobs and the environment. Our long-term interests depend upon sustaining a healthy environment, one that supports a diversity and abundance of other species. We depend upon nature's living diversity for new medicines, for advances in agriculture, and for improving our own understanding of the world. When our activities imperil the very survival of other creatures, we threaten the balance of nature and put our own futures at risk. The Endangered Species Act contains an adequate mechanism for making these difficult choices in the very rare instances when conflict cannot be avoided.

Q. Does the Endangered Species Act need to be overhauled?

A. No. For 20 years, the Act has represented a commitment to future generations that we would not diminish the rich natural heritage that was given to us. Our nation's symbol, the bald eagle, was once poised on the brink of extinction, but is now making a dramatic recovery. Despite limited funding, the Act has been successful in rescuing the eagle and many other species from the irreversible fate of extinction. Serious conflicts between species conservation and other goals have been the exception, not the rule. The Endangered Species Act represents a commitment worth keeping.

I. Topic/Problem

Should the Endangered Species Act be continued more or less as is, strengthened to give greater protection to species threatened with extinction, or weakened to reduce its impact on jobs and the economy? Environmentalists regard the Act as one of the most important environmental laws because the harm it seeks to avoid, extinction, is irreversible. They believe the Act has worked well, though the meager resources available to implement it have limited its successes. Some business interests think the Act is unreasonable, imposing heavy and unjustifiable costs on development and other business activities.

II. History of Problem

The Endangered Species Act was passed nearly unanimously by Congress in 1973. It was a response to the accelerating loss of species due to human activities throughout the world and the recognition that this loss portends potentially serious consequences for future human and environmental well being. Many scientists believe that the final decades of this century and the early decades of the next will witness a wave of plant and animal extinctions unparalleled in human history and nearly unparalleled in earth's history. Most of that loss of species is expected to occur in the tropics as a result of deforestation. However, a great many species are also at risk in the United States. Indeed, the percentage of our own plant and animal species at risk of extinction may be as high as that of the tropics.

For most of the Endangered Species Act's history, major conflicts between species conservation needs and other social objectives have been almost non-existent. The first major exception was the conflict in 1978 over Tellico Dam and the endangered snail darter. As a result of that conflict, Congress amended the Act to create the "God Committee" process as a way of exempting worthy federal projects from the requirements of the Act. Since 1978, relatively few significant conflicts occurred until the spotted owl controversy erupted in 1989. Clearcutting of "old growth" or "ancient" forests on federal lands in the Pacific Northwest threatens the survival of the northern spotted owl. A series of lawsuits (most based on laws other than the Endangered Species Act) has resulted in injunctions that have reduced the amount of timber available for sale from the region's federal forests. Congress is considering several bills to resolve the old growth controversy. Some would establish a sizeable system of "old growth preserves" to assure conservation of

the owl and other old growth-dependent species. Others would emphasize maintaining timber harvesting opportunities at predetermined levels, regardless of their environmental consequences.

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a result of non-ESA concerns and the area affected is small in any event. Perhaps more significant is the fact that this represented the first time that the God Committee had been convened since 1979.

In late July, Representative Rod Chandler (R-WA) offered an amendment to the Interior Appropriations bill that would have struck all funding for adding any more species to the endangered list. The amendment sparked sharp and partisan debate, but was eventually withdrawn without a vote.

IV. Major Predictable Events in Next Few Weeks/Months

Most observers expect that there will be an effort by timber industry supporters to force a vote in the Senate later this year on an appropriations bill rider (or other unrelated legislation) that would guarantee a given level of timber harvest from federal lands and effectively waive the requirements of the Endangered Species Act and other environmental laws. Proponents of the measure will seek to characterize the vote as one of jobs versus owls.

The various critics of the Endangered Species Act have yet to coalesce around any one bill in Congress. It is likely that a new bill will be introduced that seeks to unite the diverse interests critical of the Act. In the House, the champion of such a bill is expected to be Representative Tauzin (D-LA). In the Senate, Mr. Breaux (D-LA) is known to be planning the introduction of a bill that would require greater consideration of economic impacts in implementing the Act. Both bills are likely to be vigorously opposed by environmental interests and supported by business interests.

With the possible exception of old-growth legislation, it is highly unlikely that any of these bills will be enacted in this Congress. Rather, most observers predict that the Endangered Species Act will be addressed in the next Congress, where it will surely be one of the most controversial environmental issues considered.

V. Key Issues and Analysis

Issue: Whether the Act takes adequate account of economic impacts.

Analysis: The major complaint of the Act's critics is that it lacks "balance." They argue that it puts species conservation concerns ahead of all others and deems economic and social costs associated with species conservation irrelevant. In practice, however, virtually none of the thousands of federal projects scrutinized each year for their impacts on endangered species are blocked. The overwhelming majority either go forward as planned or are modified slightly to avoid harmful effects. For those few projects that present irreconcilable conflicts, the God Committee process that Congress created in 1978 is available.

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Q. How should the conflict over the spotted owl and old growth timber harvest be resolved?

A. Compassionately, and in a way that recognizes all the values that are at stake. The choice between owls and jobs is a false choice. Much more is at stake. The jobs of salmon fishermen, whose livelihoods depend upon clean waters suitable for salmon spawning are also at stake. The welfare of thousands of American women who suffer from ovarian and breast cancer, and whose lives may be enhanced by the drug taxol from the Pacific yew tree, is also at stake. And finally, the interests of our children and the generations after them in having an environment worth inheriting are also at stake. In

trying to be responsive to all of these real concerns, we must ensure that we invest in training, education, and the creation of new opportunities for those who might otherwise suffer from the sorts of changes that meeting these many different concerns may require.