

FOIA MARKER

**This is not a textual record. This is used as an
administrative marker by the William J. Clinton
Presidential Library Staff.**

Collection/Record Group: Clinton Presidential Records
Subgroup/Office of Origin: Council on Environmental Quality
Series/Staff Member: Kathleen (Katie) McGinty
Subseries:

OA/ID Number: 2899
FolderID:

Folder Title:
Endangered Species Act [2]

Stack:	Row:	Section:	Shelf:	Position:
S	61	6	2	2



Congressional Research Service
The Library of Congress

The attached information is forwarded in
response to your inquiry.

Sincerely,

Joseph E. Ross
Joseph E. Ross
Director

Tray:

*One of these is
very likely to be
what you're looking
for.*

*Lynne
Carm*

7-7267

Clinton Presidential Records Digital Records Marker

This is not a presidential record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

This marker identifies the place of a publication.

Publications have not been scanned in their entirety for the purpose of digitization. To see the full publication please search online or visit the Clinton Presidential Library's Research Room.



Report to the Ranking Minority Member,
Subcommittee on Water, Power and
Offshore Energy Resources, Committee
on Interior and Insular Affairs, House of
Representatives

July 1992

ENDANGERED SPECIES

Contract Funding for Selected Species





Washington, D.C. 20540

Congressional Research Service The Library of Congress

This material has been prepared in response to the requester's instructions with respect to conclusions, inclusions, or assumptions. It should not be understood or represented as presenting the views or findings of the Congressional Research Service or of the author.

July 17, 1992

TO :

FROM : Josephine Axt *[Signature]*
Graduate Intern
Environment and Natural Resources Policy Division

SUBJECT : Proposed Benefits of the Tellico Dam and Reservoir Project

As you requested, I have prepared a brief description of the proposed benefits of the Tellico Dam and Reservoir Project as put forth by both the Members of Congress and the Tennessee Valley Authority (TVA). I have described in some detail the benefits claimed by the proponents of the dam itself and, as you requested, largely omitted other arguments (e.g. inflexibility of Endangered Species Act, percent of dam completed, etc.) unless those arguments were the only ones being made at that time.

Because of your focus on the dam's benefits, in the attached chronology I have marked entries from the Congressional Record concerning benefits with an asterisk. Certain other arguments of the dam's proponents are included where 1) they voiced them repeatedly, and 2) it would give you a better idea of the general climate during the debate.

Overall, there were four pivotal actions in Tellico's history:

- 1) 06/15/78 - The Supreme Court affirmed the lower court's ruling that the Endangered Species Act (ESA) applied to the Tellico project.
- 2) 11/10/78 - The ESA reauthorization was passed into law and included a provision for an Endangered Species Committee (ESC) that could exempt projects from ESA.
- 3) 01/23/79 - ESC decided not to exempt the Tellico project from ESA.
- 4) 09/25/79 - President Carter signed the 1980 public works appropriation bill, which contained an amendment exempting Tellico from ESA.

Benefits Claimed Before Completion

The benefits espoused by both certain Members of Congress and TVA¹ in support of the Tellico dam are listed below. There is no official list of benefits per se for the project, but based on the *Congressional Record* and the Staff Report to ESC these appear to be the six most important benefits:²

* Power - increasing the power generation capability of the Fort Loudon generators by increasing the available pool of water via a connecting canal between the Tellico and Fort Loudon reservoirs.

* Flood Control - increasing water retention capacity to reduce the potential for damage due to large storms.

* Navigation - attracting companies to the region through developing the potential to ship materials by barge.³

* Land enhancement - buying more land than the project required - in other words more land than the reservoir would inundate - for the express purpose of reselling the land at a profit after its value had increased.⁴ Between 1965 - 1975, TVA acquired 21,700 acres over and above the amount to be inundated by the reservoir. The average actual price paid by TVA was \$550/acre - or \$1930/acre in 1991 dollars.⁵

¹in "Tellico Dam and Reservoir," Staff Report to the Endangered Species Committee, January 19, 1979.

²Note that this memo makes no attempt to evaluate the overall accuracy of these claims. Rather, this list is simply a report of the claims and counterclaims that existed at the time of the Tellico debate.

³The Staff Report to ESC noted that the relationship between economic growth and navigation development was not clear cut. In the report, statistics were cited that showed "...the fastest growing counties in Tennessee are those without any TVA navigation development."

⁴TVA planned to sell much of the land around the reservoir for housing. The increased value of this land depended primarily on free access to recreation activities, which TVA also counted as a benefit in a separate category. (If recreation benefits were accurately estimated, then counting land enhancement as a separate and additional benefit was a type of double-counting.)

⁵All land values and sale prices throughout this memo have been converted to 1991 dollars using consumer price indexes from the Economic Report to the President, February 1992.

This material has been prepared in response to the requester's instructions with respect to conclusions, inclusions, or assumptions. It should not be understood or represented as presenting the views or findings of the Congressional Research Service or of the author.

* Employment/General Economic - using industrial development scenarios, TVA argued that increased industry, forestry and recreation would create jobs and improve income.⁶

* Recreation - creating a reservoir behind the Tellico dam which would attract both local residents and tourists with recreation activities like boating and fishing.

Benefits Currently Claimed

The second part of your request involved comparing the benefits projected by the proponents of the Tellico project with what actually occurred after the dam was finished and reservoir filled. Unfortunately, no studies have been done, according to numerous individuals from both the Fish and Wildlife Service and TVA, as well as people who have written about the subject or were personally involved in the events.⁷ In general, these observers said that the majority of the benefits had not materialized. In particular, the general economic growth and influx of industries envisioned by TVA had not risen to the predicted levels.

Howard Saine, the Tellico Project Manager at TVA, would not indicate whether or not the organization maintained that most of the projected benefits had been realized.⁸ However, Mr. Saine did prepare and send a memo outlining the construction and development that had occurred in the Tellico area since completion of the dam.⁹ Briefly, here are the benefits that the TVA memo is now asserting accrued from the project (grouped in the same six categories considered above):

* Power - The power capability of the Fort Loudon generators has increased by roughly the amount predicted by TVA.

* Flood Control - Memo did not comment on flood control benefits.

* Navigation - Construction on the Tellico Barge Terminal was finished in 1986, with the cost of the project being equally divided

⁶Although TVA used unemployment in the region to highlight the importance of the scenarios' employment and wage effects, the Staff Report noted that an official at the Tennessee Department of Employment Security suggested that two counties in the region had "a moderate labor shortage".

⁷There has also been no study of the Tellico project by the General Accounting Office, although the findings in this memo suggest that it might be appropriate.

⁸Personal communication, June 12, 1992.

⁹TVA rarely drew careful cause and effect relationships between proposed benefits and later developments.

This material has been prepared in response to the requester's instructions with respect to conclusions, inclusions, or assumptions. It should not be understood or represented as presenting the views or findings of the Congressional Research Service or of the author.

between TVA, the state of Tennessee, and the Tellico Reservoir Development Agency. The terminal has the capacity to transship goods directly between truck, barge or rail without any double-handling. Data were not provided on the volume of material which the terminal handled or the local industries which it served.

* Land Enhancement - TVA has sold three tracts of land to residential developers and one tract of land to industrial developers since the Tellico dam was completed in 1979. Assuming the lands were purchased at the average price of \$1930/acre, TVA appears to have profited from two of the sales to residential developers, and sustained a loss from the largest residential sale and the industrial sale.

The largest sale involved 4592 acres of land which were originally purchased by TVA for \$8.9 million - assuming the purchase price was at the average of \$1930/acre (1991 dollars).¹⁰ This parcel of land was sold to Cooper Communities, Inc. for development as a planned residential community called Tellico Village in December 1985 for \$2.5 million in cash and \$10.7 million in commitments for land improvements. The land improvements included water sewage collection systems, the Tellico Yacht and Country Club, the Toqua Golf Course and Golf Center, and the Chota Recreation Center. Thus, the transaction represents a net loss to the Federal Government unless the Country Club, Golf Course and Recreation Center are counted as benefits to the Federal Government - or unless the original purchase price of the 4592 acres was more than \$1300 below the average price of \$1930/acre. Currently, 574 single-family houses have been constructed on the site; when fully developed, the community will contain approximately 12,000 residents.

The second tract of land, originally purchased for \$212,000 (assuming \$1930 /acre), was sold to residential developers for approximately \$275,000 (\$2500/acre) in October, 1986 and involved 110 acres. The area is now called Foothills Point; to date, 100 lots have been sold and 19 single-family houses have been built.

The third tract of land comprised 281 acres, originally purchased for \$542,000 (assuming \$1930/acre), and was sold for \$1.0 million (\$3750/acres) in December, 1986. The area is now called Tellico Harbor Subdivision; to date, 25 lots have been sold and 5 houses built.

In terms of land enhancement through industrial development, TVA sold Monroe County 202 acres, originally purchased for \$389,000 (assuming \$1930/acre), for \$280,500 (\$1387/acre) in March, 1980.

¹⁰Exact prices for each parcel of land were impossible to acquire from TVA in the imposed time constraints due to the complexity surrounding the purchase date, price and boundaries of the many smaller lots that made up each parcel.

Included in this contract was an option to purchase 400 additional acres for development as an industrial park. TVA's memo indicated that the park, Niles Ferry Industrial Park, now contains two new industries. One is Avecor Inc., which had "located on Tellico" in 1984 and moved its corporate headquarters there in 1987, and the second is HAVCO Wood Products, which "located in Tellico" in 1984.

* Employment/General Economic¹¹ - In addition to the two industries based in Niles Ferry Industrial Park, seven other companies have moved to the Tellico area since 1980. Following are the names of the companies and the year they "located on Tellico": Sea Ray Boat Company (1983), National Seating, Inc. (1984), Cobia Boat company, Inc. (1987), Great Lake Boat Top Company (1988), TRW Koyo Steering Systems Company (1988), Matsushita Refrigeration Company of America (1989) and Carlex Glass Company (1990).

Combined, the nine new companies currently employ 2250 people and pay over \$34 million in annual payroll.

* Recreation - Tellico Harbor Marina and the International Harbor Company (IHC) both opened in 1987 on the shores of Tellico Lake. Tellico Harbor Marina provides docking spaces, a dry storage facility, major boat and engine repairs and a restaurant. IHC offers basic marina services, such as docking spaces, gas and minor repairs.

In 1985, TVA also helped establish the Chota Waterfowl Refuge by licensing 620 acres to the Tennessee Wildlife Resources Agency. TVA licensed an additional 2240 acres to the wildlife agency, which is now administering the area as the Chota Wildlife Management Area. TVA initiated the development of a state historic area by transferring to the State of Tennessee over 400 acres of land which contained old Fort Loudon and the Tellico Blockhouse, an Indian trading center.

Benefit Calculations By TVA

TVA worked for seven years in an effort to produce a ratio that would meet with Congressional approval. Difficulties with the Tellico project emerged early on when it was discovered that the "traditional" benefits of power, navigation and flood control only yielded a benefit-cost ratio of 0.9:1. In an effort to increase the ratio, TVA included non-traditional benefits such as land enhancement, recreation and general economic benefits.

Overall, these non-traditional benefits posed serious problems for TVA because they defied precise quantitative measurement. Furthermore, the benefits had to be run through complex, long-range econometric models.

¹¹Memo did not include information on forestry benefits.

According to William B. Wheeler and Michael J. McDonald,¹² TVA based all of its econometric manipulations on five assumptions, and all of the assumptions proved to be false. Wheeler and McDonald implied that these assumptions were unstated yet understood, and maintained that they formed the foundation from which TVA developed all of its following benefit/cost calculations. The five general assumptions were:

1. Development related to the Tellico project would not negatively effect any economic benefits already present in the area.
2. Without the project, the area around the Tellico project would not grow economically.
3. After the project was finished, any and all economic progress should be attributed to the project.
4. If the possibility existed for an economic benefit related to the project to occur, then it would occur.
5. Project costs would not increase once they were decided upon.

When the Endangered Species Committee met to decide if the Tellico dam should be exempted from ESA, they evaluated TVA's benefit-cost ratio and unanimously turned down the proposal.

If you have any further questions please do not hesitate to call me at 707-7245.

¹²p. 92 in TVA and the Tellico Dam, University of Tennessee Press, Knoxville, 1986.

SELECTED CITATIONS IN THE CONGRESSIONAL RECORD¹³

* **February 8, 1977** - Discussion of the article "Minnows or Millions?" by editor Norman Bradley from the *Chattanooga Times* and article's assertions that (p. 3922):

- 1) the Tellico dam would add 200 million kilowatt hours of electric power - enough to heat 20,000 homes with electric heat - during a time when the nation was embroiled in a terrible energy crisis, and
- 2) the Tellico dam would greatly add to TVA's flood control program in a year which might be more severe than usual (no source given).

April 4, 1977 - Discussion of Tellico project conflict with ESA and remarks on workable alternatives. Also, Congressional response where conflict with ESA cannot be avoided (p. 10155).

* **July 19, 1977** - Discussion of the intractability of ESA and the State of Tennessee's House Joint Resolution No. 53 which declared, among other things, that (p. 23731):

- 1) the Tellico dam would help provide improved water quality to parts of subsequent streams, which would increase the successful reproduction of the snail darter and other species, and
- 2) the Tellico dam was critically essential for future economic growth and development in the surrounding area.

* **March 10, 1978** - Discussion of the future of public works projects if ESA were interpreted rigidly and the article "Moby Dick of the Little Tennessee" by Charles Bartlett which noted that (p. 6389):

- 1) it would be foolhardy to reassess whether or not the Tellico project was the best way to develop the Little Tennessee River in light of the amount of construction already completed on the dam, and
- 2) it was "irresponsible" of the Government Accounting Office to recommend that Congress pursue new benefit/cost ratios when the country was desperately in need of fresh sources of cheap energy.

¹³The page number given at the end of each entry refers to the page number in the bound Congressional Record (permanent edition) where the discussion started, while a "*" before an entry indicates a listing of benefits.

June 13, 1978 - Discussion of whether ESA should be applied retroactively and whether the current interpretation adequately took into consideration economic concerns (p. 17529).

(JUNE 15, 1978 - SUPREME COURT AFFIRMS APPELLATE COURT'S DECISION.)

June 22, 1978 - Discussion of the Supreme Court's ruling that ESA applied to the Tellico project. Remarks on various ways to amend ESA, with specific reference to the Department of Interior's initial implementing regulations, which addressed the subject of special consideration to projects which were in a state of advanced construction (p. 18521).

June 29, 1978 - Discussion on improving the flexibility of ESA and introduction of the article "Time To Look Through Gates of Tellico Dam," from the Maryville-Alcoa Daily Times (p. 19508).

July 17, 1978 - Senate lengthily debated S. 2899, to reauthorize and amend ESA. The bill's most controversial provision was the formation of an Endangered Species Committee, which would have the power to exempt Federal projects from section 7 of ESA if certain criteria were met (p. 21131).

* **August 3, 1978** - Introduction of a letter to the editor by former TVA chairman Aubrey Wagner that counteracted assertions made in the article "Endangered Species: The Pork-Barrel Factor," by Lewis Regenstein, and which specifically argued that (p. 24291):

1) Tellico's power capabilities were far from insignificant, as the predicted 200 million kilowatt hours of electricity produced each year - in a non-polluting and renewable fashion - would be able to meet the needs of a small city;

2) Tellico's flood storage capacity was crucial for the area: it would have prevented 15 million dollars in damage from occurring to the city of Chattanooga had it been in place in 1973;

3) the loss of agricultural land in the immediate area of Tellico would merely affect thousands of acres which were not only not in production, but which the government currently paid farmers not to cultivate; and

4) the assertion that the Little Tennessee River in the area of Tellico is "the finest trout stream in the Southeast" was quite disingenuous since trout survived only thanks to the upstream Fontana dam, which released deep water cool enough to maintain adequate trout habitat.

This material has been prepared in response to the requester's instructions with respect to conclusions, inclusions, or assumptions. It should not be understood or represented as presenting the views or findings of the Congressional Research Service or of the author.

October 14, 1978 - Conference report for S. 2899 was passed by both the House and Senate. The accompanying provisions required that ESC meet within 30 days of enactment, their decision must be made within 90 days of enactment (or the project would automatically be exempted), and exemption must be granted if certain stated provisions were met (p. 38665).

(NOVEMBER 10, 1978 - PRESIDENT CARTER SIGNS ESA REAUTHORIZATION.)

(JANUARY 23, 1979 - ESC REJECTS EXEMPTION FROM ESA FOR TELlico DAM.)

January 29, 1979 - Discussion of the decision by ESC not to exempt Tellico from ESA, with the following points raised (p. 1281):

- 1) the Senate Environment and Public Works Committee report specifically stated that the stage of completion of a project should be given special consideration, and
- 2) the House had approved H.R. 1404, which contained a special exemption for Tellico because of its advanced stage of construction when ESA was passed.

* **June 13, 1978** - Extended discussion of the Tellico project during the general debate on reauthorization of ESA. Remarks were made concerning the value of increasing the discretionary leeway in ESA, especially with regards to the social benefits of public works projects. Many benefits of the project were noted (p. 14570):

- 1) the proposed industrial development could contribute 7,900 jobs to the local area, which was suffering severe out-migration due to unemployment;
- 2) TVA plans called for the construction of 7,400 housing units on the new shoreline of the reservoir, which would help the ailing construction industry and generate new jobs;
- 3) TVA plans also included sustainably managing 10,600 acres of forested land and 2,000 acres of agricultural land, which would contribute to the local economy; and
- 4) the project would generate 200 million kilowatt hours of electricity by increasing the volume of water to turbines already in place at the Fort Loudon dam, which were built with extra capacity in anticipation of the Tellico project.

5) the vast majority of local residents backed the project¹⁴.

* **July 17, 1979** - Discussion of an amendment to the Energy and Water Development bill which would strike House language that exempted Tellico from ESA and all other laws. The benefit of increased power generation in a time of energy crisis was stressed as an argument against the amendment; the fact that the vast majority of the Tellico project had been completed before ESA was passed and the snail darter discovered was also used as a reason to vote against the amendment. However, the Senate passed the amendment with a vote of 53 yeas to 45 nays (p. 18934).

* **September 10, 1979** - Discussion of an amendment that would result in the Senate receding from its amendment of 7/17/79 and agreeing to the conference language which exempted the Tellico project from ESA and other laws. In addition to the benefit of increased power generation, remarks were made about the amount of money Congress had already appropriated for the project and the need for taking economic concerns into account when implementing ESA. The Senate passed the Tellico amendment (allowing for completion of the dam) with a vote of 48 yeas and 44 nays (p. 23863).

(SEPT. 25, 1979 - PRESIDENT CARTER SIGNS BILL WITH TELLICO AMENDMENT.)

¹⁴p. 147 in Wheeler and McDonald, TVA and the Tellico Dam, noted that "the mass confusion surrounding the conflicting poll results allowed anyone to quote one of the polls to support his or her opinion".

Date: October 14, 1978

Congress: 95th

Session: 2nd

WATER PROJECTS BILL

Passage of Bill. An emergency water projects bill, to authorize \$1 billion for about 160 public works water projects. Last vote of the session, seen as a last-ditch attempt to enact water projects legislation despite Administration objections.

Failed 129-31

for lack of quorum

GORE

YES

GEPHARDT

ABSENT

SIMON

ABSENT

Date: June 15, 1979

Congress: 96th

Session: 1st

ENERGY AND WATER APPROPRIATIONS

Amendment (Cavanaugh) to delete \$6 million from construction funds for the O'Neill Unit, Nebraska, part of the Pick-Sloan Missouri Basin project.

Failed 106-210

GORE

NO

GEPHARDT

YES

SIMON

ABSENT

Date: August 1, 1979

Congress: 96th

Session: 1st

ENERGY AND WATER APPROPRIATIONS

Amendment (Breaux) to leave the Tellico Dam Project subject to the provisions of the Endangered Species Act rather than exempt the project because of the snail darter.

Failed 156-258

GORE

NO

GEPHARDT

NO

SIMON

YES

Date: January 28, 1980

Congress: 96th

Session: 2nd

WATER RESOURCES DEVELOPMENT ACT

Amendment (Roberts) for the Public Works Committee to authorize six additional water projects in Title I of the bill, adding \$56 million to the authorizations.

Passed 335-23

GORE

YES

GEPHARDT

YES

SIMON

YES

HR 4388

* Water projects are unfairly characterized as "pork barrel." They are often essential for adequate water management, flood control, navigation, reclamation programs, economic development, job creation, recreation, and power generation.

* The attacks on specific water projects during that period were "meat axe" approaches, subverting a process that subjected projects to years of study and review by the agencies and by Congress.

* A large number of the votes were directed at three specific projects: Tennessee-Tombigbee Waterway, the Garrison Diversion Water/Irrigation project in North Dakota, and the O'Neill Irrigation Unit in Nebraska. All three of these projects had merit and were already underway. To cut them off would not have been responsible water policy, but posturing and grandstanding to the detriment of the regions involved.

Tenn-Tom is a 200-year-old idea, authorized in 1946, and begun in 1970. It took 15 years to complete. It has been slammed as a \$2 billion white elephant, but it still holds great promise for the development of one of the nation's poorest regions. Traffic on the waterway continues to grow annually.

Garrison Diversion and O'Neill Unit were designed to improve the productivity of land in the midwest. Environmental concerns were overstated, and the projects will produce much more than the investment for the nation's prosperity.

Two other specific votes, however, will be harder to defend.

Tellico Dam. Al Gore voted in 1979 to exempt the Tellico Dam from compliance with the Endangered Species Act (a tiny fish, the snail-darter, was endangered). Al Gore has been a consistent supporter of the Act, and this vote could be painted as self-interest over substance.

The real inconsistency, however, would have been stopping construction on a badly-needed project which was nearing completion. The snail-darter had been removed from the river, and is now surviving elsewhere.

Cross-Florida Canal. In 1984, Al Gore voted against the deauthorization of the Cross-Florida Barge Canal, a true white elephant that opponents believe would be an environmental disaster. It is 25% complete, but work was halted in the 70s.

But, the vote was not to appropriate money, nor to authorize more work on the canal. To deauthorize a project that has been on the books since 1942 would be premature, but Al should agree that no further work should be considered until and unless all environmental concerns are answered.

Wisconsin & Minnesota - talk abt Hy in
Great Lakes.

most of lakes are under fish advisories
call of 1st
Belief is predominant

begin of incinerators is mandatory
decision of whether

W. 4th

Opp's in Riv -

all countries looking to US for leadership

Forest policy
why is that on help cost to paper sales
history cheese policy on clear
cutting.

Chape

achievements

→ CAA - 7 people cause Bush got behind this

→ ESA ^{esp. CAA} voted to undermine

* 1979

Lynn Corn

1972- 1973. ESA

worded v. strongly - No God Squad in it -
in purpose but vague for a project

FTA in process of building Telluride
in Telluride Valley & alot of opposition
loss of funds

Cemetery site.

- 1976 Prof. OTN discovered snail darter.
- he helping those fighting dam.
 - petition to list under EPA
 - was listed by FWS
 - ~~Threat~~ + stop dam cause of sd.

Act - Cong. working on EPA v. Army; regarding
first dam 80% complete, construction under
stop

during this TVA put light out so that construction
did continue at night

Sen. Baker / Cong. Duncan then supported an
exemption for snail darter.

much opposite to this.

From Sen Kolver of Iowa → compromise - develop

God Squad

- 7 people

6 ex officio

Interior / NOAA
Sec. of Army / CEA / EPA
USDA (+ rep of affected
state)

(~~Grayback case also working~~)

1978

vote - setup as part of EDA

if no decision p/m 90 days (applies only to S.D. & Grayback)
then exempted.

Charles Shultz (CEA) → dam a bad idea (doesn't care
what free)

early
1979

vote 7-0 in favor of fish & vs. dam.

* on basis of economics rejected dam *

1979

House

Duncan amend to Energy & H&O approps → build dam
→ Went thru Unan. Consent → no recorded vote

* Al did not vote on this.

~~your~~ bill was passed in House. June 18, 1979.
to Senate
Conference late July then back to House
amended.

Aug 1 - House receded & concurred
roll call 425 "concur"

Chair of subcommittee of juris over OSA.
Breast trying to delete Senate language.

Lang. of G.S. amend ^{idea of} coupled w/ considering specific project proposals -
not genl programmatic decisions.
Pickwood → pursuing in Oct ²³ 1990 - "jumpstarting"
ESA

supposed to be a signed report that goes to G.S.
options, etc that will still preserve the species
→ want Pickwood wanted to send to the G.S. Not
sufficient for this determination.
→ v. unfocused info

exemption would be granted to a specific timber sales.
not for the owl.

May 14 exemption applies for 44 timber sales - rec'd for 13.

At Forest Service has to redo plan in light of BLM
got exemptions → poses threat to owl.

wanted the Natchez Forest Plan to be sent to God Squad & have GS
consider Forest plan (& BLM district plans) → GS decide
on an exemption for these plans (the plans proposed
a level of owl set aside that was substantially
below what others telling about).
- jump over part of Sec. considering a

exemption app'n
3 people who will apply for exemption
{ Fed agency, Governor, Applicant for permit/lease
* BLM: applicant cause I failed

in Packwood doesn't not clear who
Congress ~~just~~ ^{is} not to have consulted in good faith

1982 Amendments - addition to the Act.
4/1 late '81 when

best avail science (of commercial data)
* Not supposed to consider economic impact in listing
4/1 '81 FWS said they all can consider
'81 - Reagan Admin - Can also consider economic impact
→ listing process dropped to a trickle in '81 & '82.
Cong amend } '82 → "solely" scientific data
✓ tough report language.

3X { Tellis
Green Rocks
JWL

consultations w/ agency & FWS.

PL
HR 6133

June 8th '82
Sept 30th Conf. report voted on.

mitigation paid to get 13 exemptions - BLM says this will
interweave timber get from the sales
not clear BLM can reject mitigation
Lumber now challenging → pay BLM debt & follow all
prelim procedures.

United States Senate

WASHINGTON, DC 20510

July 20, 1992

1992 JUL 20 10 11 AM

Dear Colleague:

In 1973 Congress enacted the Endangered Species Act (ESA), signaling a national commitment to the preservation of threatened and endangered species populations. Over the last twenty years the worthy goals of the Act have not been realized: its track record in rescuing endangered species has not been good and its impact on individuals and communities has expanded dramatically. The current authorization of the ESA expires in October, 1992 and we feel that the time has come to examine the Act and make it more workable for both endangered species and humans.

Over 1,100 species have been listed as either endangered or threatened since 1973. Only five of the listed species have recovered, and three of these owe their recovery more to the discovery of larger populations than to recovery efforts required and funded under the Act. Six species became extinct after being placed on the list for protection under ESA. The Federal government has spent hundreds of millions of dollars and, according to the Department of the Interior, will have to spend billions more for the recovery of currently listed and candidate species.

Additional indirect costs imposed on American citizens already potentially reach into the billions. In the Northwest alone, since the spotted owl was listed as threatened in 1990, over 6.9 million acres of federal timber land and thousands of private acres have been set aside for owls--that's more than 3,000 acres per pair of owls. Estimates of the number of jobs that will be lost as a result of this action range from 30,000 to 100,000.

The ESA has nearly halted public timber harvesting in the Pacific Northwest, and curtailed harvesting in parts of the Southeast and Southwest. It has restricted shrimping in the Gulf of Mexico; curtailed hydroelectric and other water projects throughout the country and blocked home construction in the Sunbelt where the demand for new housing has been greatest.

We support the ESA and do not wish to see an abandonment of our national commitment to the protection of endangered species. However, we believe the Act can and should do a better job of balancing jobs and economic opportunity with species protection. We are currently working to develop proposals to achieve this balance and that would, at the very least, require a detailed analysis spelling out the costs to society of carrying out the Act's requirements before the full force of its regulations can be imposed. We invite you to join us in these efforts.

Enclosed is a list of the species that are currently listed or are candidates for listing as endangered or threatened species in your state. If you are interested in joining with us or have further questions, please contact Laird Burnett (Senator Breaux 4-4623), Jeff Roe (Senator Gorton 4-3441) or Penny Schiller (Senator Packwood 4-5244).

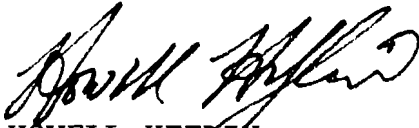
Sincerely,



JOHN BREAUX
United States Senator



SLADE GORTON
United States Senator



HOWELL HEFLIN
United States Senator



BOB PACKWOOD
United States Senator

Enclosure

To: Al
From: Katie
Re: Lindzen Spotted Owl interview
9-18-92

BOTTOM LINE: Your main message here should be that Bush is simply out of touch. He has no understanding of the problems that are REALLY facing the Northwest. So -- when his own job is on the line -- he makes up reasons to explain why their jobs have been on the line. Contrast Bush as a do-nothing fear monger to Clinton/Gore who have committed to making this a top and urgent priority of their administration; who understand the real problems and who therefore can and will work toward real solutions.

The fact is that it the overall crisis state of our economy -- with the record slow housing starts; the export of raw logs; increased automation; and the subsidized import of logs from Canada and elsewhere that are really hurting the timber industry. The only reason that the owl is at all an issue is that Bush insists on breaking the law instead of just following the requirements of NEPA and the ESA and putting together a management plan that works.

Sustainable logging IS POSSIBLE. A new report from the University of Washington states that -- with fertilization and intensive management techniques we can sustain logging. If we do not put sound management plans in place, however, we will not be able to keep loggers in place.

Moreover, instead of just fighting this -- if Bush would work with logging communities -- real opportunities for economic diversification can be identified in the Pacific Northwest. The federal government can help these communities pursue diversification by, for example, increasing revenue sharing with those states in which there is alot of federal land (current law offers a 25% revenue share -- that number can be boosted).

Federal government should also be offering targeted investment tax credits so timber companies would have an incentive NOT to export raw logs but to process them here. We also need to stop the export of raw logs from all PUBLIC lands. We should also stop the subsidy corporation receive for exporting raw logs.

IF YOU ARE ASKED ABOUT THE SNAIL DARTER --- YOU VOTED TO EXEMPT THE SNAIL DARTER ONLY AFTER A FWS STUDY SHOWED THAT IT WAS THRIVING IN OTHER RIVERS IN TN AND THAT THE RIVER THAT WAS TO BE DAMMED BY TELlico WAS NOT A CRITICAL HABITAT FOR THE DARTER.

BACKGROUND:

MARBLED MURELLET -- I understand that FWS today will likely list it as at least threatened. That will require that a management plan be developed to protect it. Habitat is

part of the quality of life that has attracted thousands of businesses and hundreds of thousands of people to the northwest over the past several decades.

Moreover, the Pacific yew is evidence of forest products importance to the pharmaceutical industry.

BUSH RECORD:

- o Bush has complained about the spotted owl's effect on logging in national forests, but HAS DONE NOTHING ABOUT THE BIG PICTURE.

- Has done nothing to help private landowners who supply twice the timber federal forests do in the Northwest.

- Has done nothing to curb export of logs -- in particular raw logs to Japan, so that the logs can be processed in the U.S. (NOTE HERE THAT CURRENTLY 25% OF THE LOGS ON WASHINGTON STATE LANDS CAN BE EXPORTED WITHOUT PROCESSING. THIS IS NOT TRUE IN OREGON OR CALIFORNIA WHERE NO RAW LOGS CAN BE EXPORTED FROM STATE OR FEDERAL LANDS. YOU SHOULD ADVOCATE THAT WASHINGTON CLOSE THAT LOOPHOLE. BE CAREFUL THOUGH IN SPEAKING ABOUT RESTRICTING LOG EXPORTS THAT YOU LIMIT YOUR COMMENTS TO STATE AND FEDERAL LANDS. YOU (AND CLINTON) HAVE NOT TAKEN THE ADDITIONAL STEP OF SAYING THAT EXPORTS FROM PRIVATE LANDS SHOULD ALSO BE RESTRICTED. YOU WOULD BE ON SAFE GROUND TO TALK ABOUT INCENTIVES TO INDUCE PRIVATE LAND OWNERS TO PROCESS LOGS HERE -- LIKE TARGETED INVESTMENT TAX INCENTIVES FOR MILLING AND PROCESSING EQUIPMENT.

- Has never addressed the \$100 million a year in tax breaks the IRS gives to log exporters (through the Foreign Corporation Sales provisions of the tax code).

- Has not developed programs to help timber workers or timber communities retrain and diversify.

- >> These communities are losing jobs to automation and the lumber industry move to the Southeast.

- >> The region has lost 30,000 jobs in logging and wood products to automation over the past decade, and that that trend is going to continue -- owl or no owl.

- Opposed extending unemployment benefits.

- o BUSH IGNORED THE TIMBER PROBLEMS IN THE NORTHWEST UNTIL THEY GREW INTO A CRISIS. Like our overall economic problems, they've been neglected for 12 years.

- o The legal morass and court-ordered halts of timber sales in the Northwest were largely caused by Bush's political appointees ignoring their scientists and forest managers and

deciding to cut timber without having followed their own regulations.

-- Judge Dwyer -- who was nominated to the federal bench by Republican Senator Slade Gorton and appointed by President Reagan -- wrote that the agency actions "exemplify a deliberate and systematic refusal by the Forest Service and the Fish and Wildlife Service to comply with the laws" (Judge William Dwyer, Memorandum Decision and Injunction, U.S. District Court, May 23, 1991).

- o The Administration proposed stopping citizens from appealing decisions about how to manage our national forests, and supports limiting citizens' ability to go to court to stop the Forest Service from violating environmental laws.

-- THAT'S TYPICAL OF THE BUSH ADMINISTRATION'S APPROACH. THEIR SOLUTION TO PEOPLE COMPLAINING ABOUT PROBLEMS IS TO TELL THEM THEY AREN'T EVEN GOING TO LISTEN.

- o Has presided over a flat and stagnant economy that has dramatically cut housing starts -- and timber demand -- not just in the northwest, but all over the country.

CLINTON-GORE PLANS

- o Governor Clinton promised to convene a meeting of all the parties affected by the current controversy in the forests of the Northwest to work out solutions to the very real economic and environmental problems that have become a crisis under the Bush Administration.

- o A Clinton-Gore Administration will:

- Make economic growth and diversification a priority;
 - Carry out the laws of the land, and protect a significant part of the ancient forest;
 - Work to see that the rest of the federal forests, and the private lands on which have twice as much timber, are managed for a sustained yield of timber that will keep a timber industry going not just for a year or two, but forever.
 - Stop tax subsidies for exporting logs, so that the taxpayer isn't paying to put U.S. workers out of a job.
 - Work with the states and local communities to diversify their economies and put people back to work. If we don't diversify, we'll have even worse problems in 5 or 10 years, when we've cut the remaining forests down.
 - Fight for balance. The President says the situation is "out of balance". But if you've ever flown over the northwest, you can see where the balance is. Most of the forest is already gone, and what remains will only last a few years, unless we change the way we do business.

- Help protect timber workers and timber dependent communities, by providing retraining opportunities, working with them to bring new industry to their region, and most important, get the national economy going again.

REGARDING BUSH SPEECH IN COLVILLE, OREGON, SEPTEMBER 14, 1992

There was a major "misstatement" in the remarks of George Bush to the employees and families at the Vaagan Brothers Lumber Company, Colville, Washington, September 14, 1992:

BUSH: "--not far from here is a timber town called Forks. And like Colville, Forks supported a mill and the mill supported a community. And because of a lack of timber the mill had to close, and today unemployment in Forks is at 20 percent. ... And Forks is in crisis for a simple reason. The balance that I was talking about, that balance has been lost. And I've come here because we must restore the balance."

TRUTH: The last sawmill and "shakemill" (processes cedar shingles) in Forks were auctioned off on May 15, 1990 and May 31, 1990, respectively. They were not the victims of the spotted owl. The spotted owl was not even listed as "threatened" until

June 1990. In fact, there were no restrictions on the cutting of timber from federal lands in the Washington old growth forests on account of the owl until May 1991, when Judge Dwyer (a Reagan appointee) of the District Court of Washington issued an injunction against the Forest Service for failure to comply with the National Environmental Policy Act.

[NOTE: Prior to Dwyer's decision, there were injunctions in place for NEPA violations which had the effect of preventing the sale of timber from some national forests in Washington. But at the time, there was in excess of 2-years supply of timber sold but not yet cut (therefore, it could be cut at any time, in spite of the injunction), so the effect was that there was no shortage of timber available to the forest products industry.]

Rather than the Endangered Species Act, the timber industry in Forks fell victim to a one-two punch delivered by (1) log exports to Japan and Korea, which put the logs out of the reach of local processors, and (2) the recession, with its attendant fall in housing starts, which dramatically decreased demand for construction wood. In addition, the shakemill fell victim to competition from Canadian mills, which had the advantage of subsidies, a favorable exchange rate, and more abundant resources. A 1986 MOU between the U.S. and Canada effectively raised Canadian prices to offset the subsidies on softwood products (including shakes), but the exchange rate and resource abundance advantages remained.

It certainly wasn't the fault of the spotted owl.

In the same speech, Bush later remarked that you stated (in reference to your book: "...Senator Gore said this -- and I quote: 'I helped lead the successful fight to prevent the overturning of protections for the spotted owl.' And Senator Gore wrote -- and I quote: 'The jobs will be lost anyway.'"

The relevant pages from your book are attached.

SUCCESS STORIES OF TIMBER COMMUNITIES THAT HAVE DIVERSIFIED THEIR ECONOMIES

The attachment provides success-story anecdotes regarding what timber communities have done to diversify their economies from former timber-dependence. The stories come from a September 1991 conference: "Rural Northwest: Exploring Common Ground." The primary sponsor of the conference was the Wilderness Society. Other sponsors included Bonneville Power Administration, Ellison Timber and Properties, Fred Meyer Corporation, James River Corporation, Northwest Natural Gas Company, U.S. Forest Service, and the state of Washington.

Oakridge, Chewelah, and Oroville were once towns whose economies were heavily dependent on the timber industry. (Not sure about the former status of Fossil.) Each town developed a strategy to diversify their economy.

Fossil, Oregon, focussed on attracting retirees, by putting together a variety of projects that included hiring a professional grant writer, developing a mini-park for tourists to dig for fossils, invested in a new sewage treatment plant, and retrofitting a Victorian House in the city into a bed-and-breakfast. They also retrofitted an apartment building into a senior citizen home, and set about recruiting seniors to live in the community.

Oakridge, Oregon, was a timber-dependent town in the Umpqua National Forest. In the late 1980s, both sawmills had shut down, and the town faced an unemployment rate of 18%. They didn't give up, but rather set out to revitalize their town. They formed a volunteer group of community activists called the "Community Response Team." Then, Oakridge implemented steps to beautify the town in order to attract new businesses; set out to attract disgruntled California industries; developed a rest-and-recreation area to lure some of the 3000 vehicles that traveled Highway 58 daily; and conducted an acreage swap with the Forest Service to acquire industrial lands and attract more new industries.

Chewelah, Washington is a rural northeast Washington city with a secondary dependence on timber and mining. When the Alcoa plant laid off half of its workforce, and the timber industry began to decline, the city decided to diversify its economy. Like Fossil, Chewelah decided to attract retirees to its community, and has had tremendous success.

Oroville, Washington, near the Okanogan National Forest in north-central Washington is heavily dependent on apples,

timber, and cattle. The community focussed on maximizing its advantage in location -- the second-busiest border crossing in Washington. Today, with the addition of an industrial park has succeeded in diversifying its economy.

during the 5 years since the 1973 act. Only those items in the custody of the United States as of the date of enactment of this legislation are affected by this amendment. As is the case under section 11, items which have been repaired since December 27, 1973, with any part of an endangered or threatened species are not exempt from the prohibitions of the Endangered Species Act.

I have discussed my amendment with attorneys for the National Marine Fisheries Service and the Fish and Wildlife Service as well as committee counsel. They agree that this amendment is workable. They feel that the 1-year period is needed not only to give adequate notice and opportunity to file to individuals who have forfeited antiques but to give the respective Secretaries time to promulgate guidelines after public comment.

Mr. BOWEN. Mr. Chairman, will the gentleman yield?

Mr. TREEN. I yield to the gentleman from Mississippi.

Mr. BOWEN. I thank the gentleman for yielding, and I wish to say that the committee has no objection to this amendment. It seems to be a sound amendment, and I hope it will be adopted by the Committee.

Mr. FORSYTHE. Mr. Chairman, will the gentleman yield?

Mr. TREEN. I yield to the gentleman from New Jersey.

Mr. FORSYTHE. Mr. Chairman, we have looked at this amendment. We have no objection to it. We think it is a good amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Louisiana (Mr. TREEN).

The amendment was agreed to.

Amendment offered by Mr. DUNCAN of Tennessee

Mr. DUNCAN of Tennessee. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. DUNCAN of Tennessee: Page 31, line 20, strike out "subsection" and insert in lieu thereof "subsections".

Page 32, line 21, strike out the closing quotation marks and the final period.

Page 32, after line 21, insert the following:

"(1) Tellico Dam and Reservoir Project.—The provisions of this Act shall not apply with respect to the construction and operation of the Tellico Dam and Reservoir project in Tennessee. The harassment, harm, killing, or wounding, if any, of any endangered species or threatened species attributable to the construction or operation of such project shall not be deemed to be a taking of any endangered species within the meaning of section 9(a)(1) of this Act or the taking of any threatened species if a prohibition against the taking thereof is imposed by regulations pursuant to section 4(d) of this Act."

Mr. DUNCAN of Tennessee (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.

The CHAIRMAN. Is there objection to the request of the gentleman from Tennessee?

There was no objection.

Mr. DUNCAN of Tennessee. Mr. Chairman, I rise to offer an amendment to H.R. 14104, the reauthorization legisla-

tion for the Endangered Species Act of 1973. My amendment specifically exempts the TVA's Tellico Dam and Reservoir project from the provisions of the Endangered Species Act, and nothing more.

Many of my colleagues are probably aware of the project I refer to, because it has gained national attention in recent months. But I would briefly like to refresh your memory as to the facts of this case.

First of all, this is not a project TVA started in violation of the act. Tellico was begun in 1967 after almost unanimous congressional authorization in 1966. The Endangered Species Act was not passed until 1973, and the snail darter was not listed until 1975. By this time 8 years had passed and many millions of dollars had been spent.

I would not be here today asking that Tellico be exempted, if it was not now nearing completion, but, my colleagues, it is 99 percent complete. Time and again Congress has stated that it intends for Tellico Dam and Reservoir be completed. Administration budget requests and actual appropriations over the years have included the Tellico project. More recently the House, on June 10, 1978, in its wisdom, spelled out in the appropriations legislation that \$1,846,000 was for the completion of the Tellico Dam and Reservoir. Senator SASSER offered this same language in the Senate, and it was adopted by that body. The request for the Tellico funds had and was a part of President Carter's budget request.

To date, \$107 million of taxpayers' money has been spent on this project.

Furthermore, this money was invested in good faith. Tellico Dam is located in an economically depressed area of east Tennessee. Jobs and industry are needed to stem the flow of outmigration by the young people of the area. Many people gave up their land and homes in the hope that they would receive something more in return.

Construction workers have been thrown out of work because of the court stoppage of the project. Labor, business, the media, and an overwhelming majority of the people in the area want the project completed. I might also say that this project will furnish electricity for 22,000 homes.

To me, all of this is ample justification for the amendment. However, I would like to also speak to the issue in view of the Endangered Species Act. In 1975, TVA, in cooperation with the Fish and Wildlife Service, began transplanting snail darters from the Little Tennessee River to the nearby Hiwassee River. Recently the Interior Department announced that those 710 transplanted darters have since multiplied to as many as 3,700. Also, the number of snail darters in the Little Tennessee has decreased to about 500, raising the very real possibility that the Hiwassee is now the snail darter's critical habitat.

Mr. Chairman, it is evident that the Little Tennessee can no longer be defended as the snail darter's critical habitat, and given this, there is no reason why Tellico Dam should not now be exempted from the Endangered Species

Act, and completed so that its benefits may be brought to the people of this depressed area.

Time and money have been invested, commitments have been made. It is now time to reap the benefits of that investment and fulfill our commitments. Mr. Chairman, my amendment allows us to do that and I strongly urge my colleagues to support it. Thank you.

Mrs. LLOYD of Tennessee. Mr. Chairman, I rise in support of the amendment.

Mr. Chairman, I rise in support of the amendment offered by my friend Mr. DUNCAN. This project which effects both of our districts has remained in a state of suspended animation since the ruling of the Sixth Circuit Court of Appeals. In affirming that lower court ruling, the Supreme Court made note that interpretation of the Endangered Species Act which precluded completion of the Tellico Dam was good law, but poor legislation.

As my friend has explained, the project is for all intents and purposes complete. The project was approved and begun prior to the enactment of the Endangered Species Act. Every indication available points to the fact that the snail darter is surviving and in fact prospering in habitats other than the Little Tennessee River. Specifically in the Hiwassee River.

The area surrounding this project lies within the definition of the Appalachian region. Unemployment is generally high, and there is a substantial out migration of younger workers. The area has an available labor force, rail, and utility interconnects. Completion of this project will contribute significantly to the economic viability of our region.

I would urge my colleagues on the basis of fundamental fairness to approve this amendment. I yield back my time.

Mr. DINGELL. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, this probably is the most serious single aspect of the controversy which exists as regards the endangered species legislation. While I do not blame the gentleman from Tennessee and the gentlewoman from Tennessee who are offering the amendment, it should be known it is a bad amendment and goes far beyond the correction of the problem as it exists as regards Tellico.

I would like to break my discussion into two parts. The first is the question of the other parts which have carefully not been alluded to in the offering of the amendment. In point of fact, what the amendment says is that the harassment, harming, killing, or wounding of any endangered species or threatened species shall not be deemed to be a taking within the provisions of the Endangered Species Act.

So not only is the project being exempted but the whole definition of how one affects the endangered species in the area is being changed so that permission is being given here by legislative fiat to complete the Tellico Dam in spite of the fact that the court has held that it was being constructed in contravention of the law and without the required consultations which were supposed to take place to protect and to preserve the species.

But this goes still further. It says if we want to go out and hunt, if we want to seine, if we want to fish, if we want to dynamite or use a telephone in the old-fashioned and time-honored version of fishing long used in the area, we may do so without in any way contravening the provisions of the statute.

Everybody says Tellico is a bad situation. We have a \$100 million dam sitting down there.

First of all, the dam was opposed from its inception by the overwhelming number of people in the area. It was opposed even by the Governor of the State, and it was opposed in hearings held in the area.

It is a proposal where we have what was at the time of the construction an outlaw agency which arrogantly, flagrantly, and vigorously disregarded what they knew to be the clear thrust of the law.

They arrogantly, flagrantly and vigorously disregarded what they knew to be the clear thrust of the law.

They simply, in their arrogance, said that the law does not apply to TVA. They refused to consult with TVA. They refused to take any steps which might enhance or mitigate or to obviate some of the adverse features which would occur with regard to this particular action. As a result, they wound up falling not only under the bane of the Endangered Species Act but also falling under the bane of the National Environmental Protection Act because they had refused to comply with that.

Now we find ourselves, when TVA has come forward and said that they can correct the problem—they are proceeding to transplant the species into another stream where there is a large number. They are at this time analyzing whether or not there is any advantage to the area on a cost-benefit basis of continuing with the closure of the dam.

Some of the benefits that were supposed to lie in connection with that particular project were the provisions which related as regards an industrial city which was supposed to be constructed. Boeing was supposed to construct the city. They have said, no, there is no cost benefit to this and we are not going to construct that city.

They have withdrawn.

Many of the industrial benefits remain available for roads and railway sites, which are currently available, and TVA has said they are going to do it. Immense value, even as regards tourism, as regards hunting and fishing, and as regards returning the massive amount of lands which would have been flooded, to produce virtually no electric power.

The CHAIRMAN. The time of the gentleman has expired.

(By unanimous consent, Mr. DINGELL was allowed to proceed for 3 additional minutes.)

Mr. DINGELL. You are talking about flooding some of the ancestral homelands of one of the great Indian nations of this country. But, more importantly, you are talking about destroying farmland where the topsoil is 15 feet deep.

There is a real question as to whether the cost-benefit ratio at this particular

time is greater to stay with the closure of the dam and the flooding of the area or whether the Nation would be better served to simply disregard this ill-conceived project and proceed to return the land to agriculture for the benefit of the citizens of the area, for employment and for tourism because, as one opponent of the dam has pointed out, it is a whole lot easier to pick a tourist than it is to pick a bale of cotton.

Now, Mr. Chairman, I promised I would yield to the gentleman from Tennessee (Mr. DUNCAN) and I so yield.

Mr. DUNCAN of Tennessee. Mr. Chairman, the gentleman mentioned that the Governor of Tennessee was opposed to this project. The Governor of Tennessee is strongly in favor of the construction of this project. So is the legislature, they voted 90 to 0 that they wanted the project completed.

Mr. DINGELL. Mr. Chairman, for the benefit of the gentleman, permit me to say I said one of the Governors of Tennessee in its earlier days was opposed to the project, as was the majority of the legislature at that time.

What has happened is that TVA, with its usual bureaucratic use of public funds, has now wormed itself into a position where it has a project that now has public acceptance.

Mr. DUNCAN of Tennessee. Is the gentleman not also familiar with the report prepared by the Department of the Interior and the Tennessee Valley Authority, which says that the TVA did cooperate? The gentleman is also aware of the fact that in the committee hearing, the Department of Commerce people said that the TVA did what they were supposed to do, is he not?

Mr. DINGELL. No, that is not correct. Mr. DUNCAN of Tennessee. The fact is that as long as the district court had held that they could continue the project, they continued the project.

Mr. DINGELL. They continued the project. They built that project in active violation of a court order. For 21 days they were in active violation of a court order, and that is on the records of the court. I am also familiar with it. The document referred to says that they have not been in cooperation with the Interior Department. They are now in cooperation, and they are suffering some vilification from the proponents of this particular project because they are now cooperating with Fish and Wildlife Service.

Mr. DUNCAN of Tennessee. Once the court held against them, they cooperated 100 percent.

Mr. DINGELL. No, that is not so. Mr. DUNCAN of Tennessee. They did everything the circuit court of appeals said when it ruled the dam should not be completed.

Mr. DINGELL. The gentleman is totally in error. For 21 days they were building this project in open defiance of the law.

Mrs. LLOYD of Tennessee. Mr. Chairman, will the gentleman yield?

Mr. DINGELL. I yield to the gentleman from Tennessee.

Mrs. LLOYD of Tennessee. Mr. Chair-

man, I thank the gentleman for yielding.

My colleague Mr. DUNCAN and I happen to represent the area encompassing the Tellico Dam and know of the overwhelming support for the project and, Mr. Chairman, I would submit that the gentleman in the well has gone the full gamut of those so-called environmentalists objections to this vital source of energy and industry. We must move forward and complete the Tellico Dam which is now 90 percent complete.

Mr. DINGELL. Mr. Chairman, I would simply observe that the law now provides a mechanism for this project to go forward within the framework of the provision we have before us, and I would urge rejection of the amendment.

Mr. QUILLEN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the amendment to exempt Tellico Dam, in support of the amendment offered by my friend and neighbor, the gentleman from Tennessee (Mr. DUNCAN) and the gentlewoman from Tennessee, (Mrs. LLOYD).

Mr. Chairman, when this measure was before the Committee on Rules, I had a little 3-inch fish in one of the water pitchers at the committee table. It was only 3 inches long. I used it to demonstrate what the snail darter has done not only to the economy in Tennessee, but to power production in the valley. A dam has been stopped, because of this 3-inch fish which has been transplanted to another habitat, and it is living and progressing in its new environment. It is not in danger.

Mr. Chairman, later on this afternoon, we are going to have an energy bill before the House. The emphasis of this administration and of this country is to produce more power and more energy. I think if we let this little fish, this little 3-inch snail darter, which is living in another habitat and progressing and flourishing, stop the completion of this dam, we ought to look at the matter in all seriousness and face up to the reality of it.

We all must live in harmony with nature. We know that, but when we realize that this dam is not being completed as a result of this little fish, then we should take another look at the whole matter.

Mr. Chairman, I would urge my colleagues to support this amendment.

Mr. FORSYTHE. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, again I reluctantly rise to oppose this amendment. It does again, as with the last amendment, I think, create a problem.

Mr. Chairman, there was reference to the report of the Tennessee Valley Authority and the Department of the Interior of August 10, 1978. I think the most significant line this whole report—and it was an indepth report—is in the introduction:

It is entirely possible that the project can be completed as originally planned, by using the flexible approach engaged by the Endangered Species Act.

Clinton Presidential Records Digital Records Marker

This is not a presidential record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

This marker identifies the place of a publication.

Publications have not been scanned in their entirety for the purpose of digitization. To see the full publication please search online or visit the Clinton Presidential Library's Research Room.



United States General Accounting Office

Briefing Report to the Chairman,
Committee on Science, Space, and
Technology, House of Representatives

May 1992

ENDANGERED SPECIES ACT

Types and Number of Implementing Actions



ENVIRONMENTAL AND ENERGY STUDY CONFERENCE

SPECIAL REPORT

March 19, 1992

Northern spotted owl: chronology of events and status of major lawsuits

by Leslie Ann Duncan

Since January 1987, when a small Massachusetts-based environmental group petitioned the U.S. Fish and Wildlife Service to protect the northern spotted owl, the continuing imbroglio over management of forests and wildlife in the Pacific Northwest has come to involve a remarkable array of federal judges, lawmakers, administration officials and lobbyists.

The ongoing conflict between the timber industry and environmentalists in the Northwest came to a head in the summer of 1990 when the Fish and Wildlife Service listed the spotted owl as a threatened species under the Endangered Species Act, setting the stage for stringent logging restrictions in the region.

The agency concluded the bird was being driven to the brink of extinction by timber harvests in "old-growth" forests, woodlands characterized by towering stands of coniferous trees hundreds of years old. Most of what remains of these forests are located on lands managed by the U.S. Forest Service and Bureau of Land Management.

Old-growth forests are valued by environmentalists as biologically rich ecosystems supporting hundreds of plants and animal species. While the spotted owl depends on old growth for food and shelter, the bird is likewise considered an "indicator species" by which to gauge the overall health of these forests.

For dozens of rural towns in the Northwest whose economies are built around the timber industry, the same forests are a vital commercial resource. Protection of the spotted owl to them means the loss of thousands of jobs, though the extent of economic disruption in the region remains sharply debated.

Much of the battle over the spotted owl has been waged in federal court, with a total of seven major lawsuits pending before five judges. Injunctions related to these suits have at various times halted logging on thousands of acres of federal forest land in Washington state, Oregon and northern California.

BOB WISE, JOHN McCAIN, *Co-Chairmen*; JAN MEYERS, CHRISTOPHER J. DODD, *Co-Vice Chairs*
U.S. CONGRESS H2-515 FORD HOUSE OFFICE BUILDING WASHINGTON, D.C. 20515 (202) 226-3300
LINDA CARTWRIGHT, *Director*; STEVE GORMAN, *Editor*

Although four of the judges have said in preliminary opinions that the administration violated numerous wildlife and forest management laws, no final rulings have been issued in any of the cases.

Concern over job losses rose again in January of this year, when the Fish and Wildlife Service, acting under a court order, designated nearly 7 million acres of forest land in the Northwest as "critical habitat" considered necessary for the owl's survival. Logging is likely to be curtailed in most of those areas.

On Tuesday, three House committees will examine the Bush administration's latest plans to save both the rare owl and endangered logging jobs.

The hearing will focus on two actions taken in recent months by Interior Secretary Manuel Lujan Jr. in an effort to cushion the economic consequences that may result from enforcement of the Endangered Species Act to save the owl:

- convening the Cabinet-level Endangered Species Committee, or "God squad," to decide whether to overrule a Fish and Wildlife Service decision blocking 44 timber sales by BLM, a sister agency under the Interior Department. The God squad is empowered to grant exemptions to constraints imposed under the Endangered Species Act — such as logging restrictions — in cases of severe economic hardship.

- creating a special task force to devise a strategy for maintaining a stable population of spotted owls while protecting timber jobs.

Lujan's actions have raised objections from environmentalists and some members of Congress, who charge that the God squad was convened prematurely and that the Lujan task force is bound to propose solutions that fall short of the stringent requirements of the Endangered Species Act.

God squad: Rep. Gerry E. Studds (D-Mass.), chairman of the House Merchant Marine subcommittee on fisheries and wildlife conservation, one of the panels participating in Tuesday's hearing, called for the General Accounting Office Feb. 19 to investigate alleged improprieties in the Interior Department's handling of the God squad process.

Studds asked GAO to examine whether the department failed to comply with the legal requirements that must be met before the God squad is convened, and whether department officials have acted improperly during the exemption process.

Specifically, Studds said he believes BLM failed to consult "in good faith" with the Fish and Wildlife Service on the effect the 44 timber sales would have on the protected owl, and that BLM failed to make a "reasonable and responsible effort" to consider prudent alternatives to the sales. Both actions are required by the Endangered Species Act.

Additionally, Studds charged that BLM failed to comply with the National Environmental Policy Act by not completing an adequate environmental impact statement analyzing the effects of the proposed timber sales on the owl and its habitat.

Studds also asked GAO to look into allegations that Lujan, the department's solicitor Thomas Sansonetti, and other department officials have failed to follow legal requirements

designed to ensure the God committee reaches an unbiased opinion.

Studds said Sansonetti is performing potentially conflicting roles. Sansonetti advises Lujan about the God committee, advises God committee members about the law, and advised Administrative Law Judge Harvey Sweitzer, who ran the fact-finding hearings for the God committee. Studds called these three roles compatible, but said Sansonetti's other duties as chief legal adviser for the department — which include advising Lujan on litigation strategy for the various spotted owl lawsuits against the department — constitute a direct violation of the Endangered Species Act. The law forbids agency officials who participated in the consultation at issue or in a factually related matter from advising in the decision-making process leading to a possible exemption by the God squad.

Task force: The interagency task force announced by Lujan Feb. 18 is charged with developing options for preserving the owl.

A previous Interior Department panel — appointed by Lujan — had already drafted a "recovery plan" as required by the Endangered Species Act. The act requires that the federal government take steps to increase the population of threatened or endangered species until they no longer need the protection of the law.

That plan — which has not been released because it was suspended under President Bush's 90-day moratorium on new federal regulations — would set aside 7.5 million acres of federal land for the owl, off-limits to commercial logging. The recovery team estimated that the 196 protected areas it recommended would eventually support 2,320 pairs of owls. The "designated habitat areas" were designed to include both existing owl habitat and areas of younger forest that the owls could move into. The plan also mapped the areas close together so the owls could travel between them.

However, Lujan estimated that the recovery plan would cost 31,000 jobs, a figure he said he did not "feel comfortable with." He said the task force would try to devise an option that would keep the owl population stable, but would not necessarily increase it.

Interior Department spokesman Bob Walker said the task force "won't be constrained by what the law says" in trying to devise an owl conservation strategy with less economic impact than the proposed recovery plan. Lujan and other department officials have acknowledged that any plan not meeting the requirements of the Endangered Species Act and other laws would have to be approved by Congress.

Hearing: In addition to Studds' subcommittee, the hearing Tuesday will involve the House Agriculture subcommittee on forests and the House Interior subcommittee on public lands. Administration officials are expected to testify.

The following is a chronology of major developments in the courts, Congress and federal agencies pertaining to the spotted owl. A table summarizing the status of the major lawsuits involving the spotted owl also is included.

A BIT OF HISTORY

Chronology of court and agency action

1975	• Oregon Department of Fish and Wildlife includes the northern spotted owl on a list of the state's "threatened" species.
1977	• The Oregon state director of the Bureau of Land Management and the regional forester of the U.S. Forest Service agree to protect owl habitat based on recommendations by a combined federal-state interagency task force.
Early 1980s	• The Forest Service lists the owl as an "indicator species" in several forest management plans, meaning that the health of the owl population reflects the health of the forest as a whole.
January 1987	• The Massachusetts-based environmental group Green World petitions the U.S. Fish and Wildlife Service to list the spotted owl under the Endangered Species Act.
October 1987	• A coalition of environmental groups seeking to protect the owl file suit in federal court in Portland, Ore., challenging 200 timber sales planned by BLM in western Oregon.
December 1987	• The Fish and Wildlife Service denies petition to list owl. • Congress adopts section 314 of the fiscal 1988 interior appropriations bill to limit court challenges to BLM timber sales.
April 1988	• U.S. District Judge Helen Frye of Portland, Ore., dismisses suit against BLM.
May 1988	• Environmental groups sue the Fish and Wildlife Service in federal court in Seattle seeking spotted owl listing. • The 9th U.S. Circuit Court of Appeals in San Francisco issues emergency injunction against BLM timber sales pending appeal.
September 1988	• Congress again adopts judicial review restrictions under section 314 of the fiscal 1989 interior appropriations bill.
November 1988	• U.S. District Judge Thomas Zilly of Seattle finds the Fish and Wildlife Service decision not to list the owl "arbitrary and capricious" and orders the agency to reconsider.
January 1989	• The 9th Circuit reverses Judge Frye's dismissal of the suit against BLM, renews the timber sale injunction and orders Judge Frye to try the case on its merits.
February 1989	• Environmentalists sue the Forest Service in federal court in Seattle, challenging the agency's spotted owl management plan on grounds that it fails to meet the requirements of the National Forest Management Act, the National Environmental Policy Act and the Migratory Bird Treaty Act. • Timber industry groups file separate federal suits, also in Seattle, charging the owl management plan is too restrictive and seeking an injunction to enforce current logging levels. • The various Forest Service suits are consolidated under <i>Seattle Audubon Society vs. Robertson</i>. • Judge Frye issues a temporary restraining order against the 200 BLM timber sales pending a decision in that case.

March 1989	• U.S. District Judge William Dwyer of Seattle issues a preliminary injunction blocking 135 Forest Service timber sales in owl habitat. • Judge Frye issues a preliminary injunction in the BLM suit.
May 1989	• Judge Frye finds BLM's failure to consider new information about the spotted owl in planning timber sales "arbitrary and capricious," but she rules that the agency is insulated from legal challenge on those grounds under section 314, and she dismisses the suit for a second time. • The 9th Circuit issues a second injunction pending appeal of Judge Frye's ruling.
June 1989	• The Fish and Wildlife Service formally proposes to list the spotted owl as a threatened species throughout its U.S. range in Washington, Oregon and northern California, but says critical habitat is "not determinable."
September 1989	• The 9th Circuit affirms the dismissal of the portion of the BLM suit dealing with new information on the owl and lifts injunction on the 200 sales. The appeals court sends the case back to Judge Frye for further hearing on charges that the agency violated the Migratory Bird Treaty Act, the Oregon and California Lands Act and the Federal Land Policy and Management Act.
October 1989	• Congress passes revised timber sales targets and new restrictions on judicial review of both BLM and Forest Service timber sales under section 318 of the fiscal 1990 interior appropriations bill.
November 1989	• Judge Dwyer, citing section 318, lifts injunction on Forest Service timber sales.
December 1989	• Judge Frye dismisses the BLM case for the third time, declaring it moot under the judicial review limitations in Section 318.
April 1990	• An interagency panel of government scientists led by Jack Ward Thomas issues a report calling for drastic logging restrictions to protect the owl.
May 1990	• The Forest Service estimates 28,000 jobs would be lost by the year 2000 in the Pacific Northwest under the Thomas plan.
June 1990	• The Fish and Wildlife Service decides to list the spotted owl as a threatened species throughout its range but refuses to designate critical habitat. • Agriculture Secretary Clayton Yeutter creates a task force to devise an alternative to the Thomas recommendations that minimizes economic impact.
September 1990	• The 9th Circuit strikes down Section 318 as unconstitutional. • BLM announces it will not follow the Thomas recommendations on its lands in Oregon and California but will use the "Jamison strategy" — named for BLM Director Cy Jamison — to protect the owl and ensure "reasonable" timber harvests. • Yeutter task force recommends amendments to the Endangered Species Act, the National Forest Management Act, the National Environmental Policy Act and other forest management laws.
February 1991	• Judge Zilly rules that the Fish and Wildlife Service "failed to discharge its obligations under the Endangered Species Act and its own regulations ... [and] abused its discretion." He orders the agency to define the habitat critical to the survival of the owl.
March 1991	• Judge Dwyer rules that the Forest Service failed to develop an owl protection plan as required under the National Forest Management Act, a lapse he describes as "arbitrary and capricious and not in accordance with law." The judge schedules a hearing to determine the scope of injunctions.

April 1991	• Environmentalists file suit in federal court in Eugene, Ore., charging that BLM violated the Endangered Species Act by failing to consult with the Fish and Wildlife Service in devising the Jamison strategy.
May 1991	• The Fish and Wildlife Service proposes 11.6 million acres as critical habitat. • Judge Dwyer enjoins timber sales in 17 national forests until the Forest Service formally prepares an environmental impact statement and adopts a plan to protect the owl. Dwyer says agency actions represent "a deliberate and systematic refusal by the Forest Service and the Fish and Wildlife Service to comply with the laws protecting wildlife ..."
June 1991	• The Supreme Court agrees to review constitutionality of section 318. • The Fish and Wildlife Service issues a "jeopardy opinion" that blocks 44 BLM timber sales in western Oregon, arguing that the sales would threaten the continued existence of the owl.
August 1991	• The Fish and Wildlife Service revises its critical habitat proposal to cover 8.2 million acres by removing private lands from the definition.
September 1991	• Jamison asks Interior Secretary Manual Lujan Jr. to convene the Cabinet-level Endangered Species Committee — known as the God committee or God squad — to review the Fish and Wildlife Service jeopardy opinion. • U.S. District Court Judge Robert Jones of Eugene rules that BLM violated the Endangered Species Act when it failed to consult with the Fish and Wildlife Service on the Jamison strategy. • The Forest Service proposes to adopt the recommendations of the Thomas panel to protect owl habitat.
October 1991	• Lujan announces he will convene the Endangered Species Committee. • Four government scientists release estimates of job loss and economic impact for various owl preservation scenarios, with maps of critical habitat options. The scientists also allege that the Forest Service has been overestimating the timber harvest potential of national forests in the Northwest.
November 1991	• Endangered Species Committee holds its initial meeting.
December 1991	• The 9th Circuit upholds Judge Dwyer's May ruling that the Forest Service must comply with species protection provisions in the National Forest Management Act as well as the Endangered Species Act. • Judge Zilly rejects a Fish and Wildlife Service petition to delay issuing the final critical habitat plan. • The Fish and Wildlife Service asks Administrative Law Judge Harvey Sweitzer to terminate Endangered Species Committee proceedings because BLM did not consult in good faith before convening the panel, as required by the Endangered Species Act. Interior Department lawyer withdraws that request because it conflicts with the department's position in a pending lawsuit pertaining to the spotted owl. • The Environmental Protection Agency prepares testimony for the Endangered Species Committee hearings stating that BLM violated the National Environmental Policy Act when it failed to consider new information pertinent to its timber sales program.

SO FAR THIS YEAR ...
Court and agency action in 1992

Jan. 8	•Hearings before Judge Sweitzer begin in Portland to gather information for the Endangered Species Committee. •EPA withdraws its prepared testimony about BLM's compliance with the National Environmental Policy Act.
Jan. 10	•Three BLM employees testify before Judge Sweitzer that BLM is still using the Jamison strategy, despite a court ruling in September 1991 that the strategy was implemented in violation of the Endangered Species Act.
Jan. 15	•The Fish and Wildlife Service publishes final recommendations for habitat protection, designating 6.9 million acres of federal land as critical habitat for the owl.
Jan. 24	•The Forest Service releases final environmental impact statement on its owl management plan, saying it prefers to follow the 1990 Thomas committee recommendations.
Jan. 28	•Under subpoena, the Environmental Protection Agency submits to Judge Sweitzer its testimony that BLM failed to comply with the National Environmental Policy Act.
Feb. 18	•Lujan announces the formation of a new task force that will develop options to save the owl at less economic cost than the recovery plan drafted by the Fish and Wildlife Service. Lujan acknowledges that the task force may make recommendations that "would not necessarily meet requirements imposed by current law" and says the proposals of the task force will be submitted to Congress.
Feb. 19	•Judge Frye blocks logging on all BLM old-growth forests, finding that environmentalists are likely to prevail on the merits of their suit charging that BLM failed to comply with the National Environmental Policy Act.
Feb. 21	•The attorney hired to represent the Fish and Wildlife Service before Judge Sweitzer quits after refusing to amend his brief as requested by the Interior Department solicitor. The attorney refused to delete a segment maintaining that BLM had failed to comply with the Endangered Species Act by refusing to consult with the Fish and Wildlife Service in good faith and to consider reasonable and prudent alternatives.
March 3	•The Agriculture Department submits Thomas recommendations as proposed recovery plan to Judge Dwyer.
March 4	•The 9th Circuit upholds Judge Jones' ruling that BLM violated the Endangered Species Act.
March 10	•The Fish and Wildlife Service was due to release a draft recovery plan for the owl calling for preservation of 196 designated conservation areas totaling 7.5 million acres as primary habitat, which would eventually support 2,320 pairs of owls. But the draft was withheld under President Bush's 90-day regulatory review order.

WHO'S SUING WHOM

Major owl-related lawsuits

Case	Judge and Court	Status
<i>Portland Audubon Society vs. Lujan.</i> Environmental groups challenge BLM's compliance with the National Environmental Policy Act and seek to halt 200 BLM timber sales.	Helen Frye, U.S. District Court, Portland, Ore.	Judge Frye Feb. 19 enjoined timber sales in old-growth forests on all BLM lands pending her final ruling on the case, expected this spring.
<i>Northern Spotted Owl vs. Lujan.</i> Environmentalists seek protection of spotted owl under Endangered Species Act.	Thomas Zilly, U.S. District Court, Seattle.	The Fish and Wildlife Service declared the owl a "threatened species" protected by the act in 1990, and set aside nearly 7 million acres of federal forest land as owl habitat this February, but has yet to release a recovery plan.
<i>Seattle Audubon Society vs. Robertson.</i> Environmentalists challenge the owl management plan of the Forest Service, claiming it does not meet the species protection requirements of the National Forest Management Act.	William Dwyer, U.S. District Court, Seattle.	In May 1991, Judge Dwyer enjoined timber sales on 17 national forests until the Forest Service formally adopts a plan to protect the owl. The agency this month proposed adoption of Thomas report as its owl management plan.
<i>Washington Contract Loggers Association vs. Robertson.</i> Timber industry groups challenge the same management plan, charging it is too restrictive and seeking injunctions to maintain current logging levels.	William Dwyer, U.S. District Court, Seattle.	Folded into <i>Seattle Audubon Society</i> case.
<i>Lane County Audubon Society vs. Jamison.</i> Environmental groups charge that BLM did not consult with the Fish and Wildlife Service, as required by the Endangered Species Act before taking any action which may threaten the owl.	Robert Jones, U.S. District Court, Eugene, Ore.	9th Circuit upholds Judge Jones' ruling that BLM violated the Endangered Species Act.
<i>Sweet Home Chapter of Communities for a Great Oregon vs. Lujan.</i> Timber groups, Northwest communities and businesses challenge two Fish and Wildlife Service regulations relating to "taking" of a protected species, which is forbidden by the Endangered Species Act.	Norma Holloway Johnson, U.S. District Court, Washington, D.C.	Pending.
<i>Sweet Home Chapter of Communities for a Great Oregon vs. Turner.</i> The same parties challenge the critical habitat designations proposed by the Fish and Wildlife Service, claiming they are unenforceable on state and private lands.	Norma Holloway Johnson, U.S. District Court, Washington, D.C.	The Fish and Wildlife Service rescinded the guidelines Feb. 27, 1992.

From
Jolene
Unsold

September 25, 1992
Jolene Unsoeld

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 diversify 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.

Additional References:

Daniel J. Rohlf, Natural Resources Law Institute Lewis and Clark Law School, "Six Biological Reasons Why the Endangered Species Act Doesn't Work -- And What To DO About It", Conservation Biology Vol. 5, No. 3, September 1991.

Stanley V. Gregory, Frederick J. Swanson, W. Arthur McKee, and Kenneth W. Cummins, "An Ecosystem Perspective of Riparian Zones, Focus on Links Between Land and Water", BioScience Vol. 41 No. 8.

Wayne Elmore, Bureau of Land Management, Prineville, OR, "Riparian Responses to Grazing Practices".

Stephen C. Ralph and Robert J. Naiman, Professor, College of Forest Resources and School of Fisheries, Center for Streamside Studies.

Jerry Franklin, Bloedel Professor of Ecosystem Studies at the University of Washington and formerly chief plant ecologist for the Forest Service.

Chadwick Dearing Oliver, Professor of Silviculture, College of Forest Resources, University of Washington.

Clinton Presidential Records Digital Records Marker

This is not a presidential record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

This marker identifies the place of a publication.

Publications have not been scanned in their entirety for the purpose of digitization. To see the full publication please search online or visit the Clinton Presidential Library's Research Room.

1991 INDEX

Vol. XVI

ENDANGERED SPECIES

Technical Bulletin

Department of the Interior, U.S. Fish and Wildlife
Service, Washington, D.C. 20240

INDEX TO

ENDANGERED SPECIES TECHNICAL BULLETIN

VOL. XVI (1991)

TO: KATIE

FROM: PAM

JACQUIE ASKED ME TO SEND
ON THE SNAIL DARTER
STUFF. CALL IF YOU NEED
MORE

615 433
4951

FPP

NEWS FROM

U.S. Senator Al Gore



(D - Tennessee) SR 393 Russell Building, Washington, D.C. 20510 (202) 224-4944

* In 1975, TVA, in concert with the Fish and Wildlife Service, began transplanting snail darters from the little Tennessee River (where the Tellico Dam was) to the nearby Hiawassee River. The Interior Department announced in 1978, before the Gore votes on ESA, that those 710 darters had multiplied to 3,700. The number of darters in the Tennessee river had decreased to 500, most probably because the construction was already 90% completed on the dam. Theoretically, the Hiawassee, which was not affected by the Tellico Dam, was a critical habitat for the snail darter, rather than the little Tennessee, at the time the ESA votes were cast by Gore.

* The vote to exempt Tellico that Gore voted on was in 1978. [REDACTED]
[REDACTED] 231 Representatives voted to exempt the Tellico and it passed. The God Squad met AFTER this vote, in Feb. of 1979. The provision to override the god squad was put through in June by Rep. Duncan - no vote was recorded on this. The Senate made the final decision in conference to allow the Tellico Dam to be exempted. Gore NEVER voted to override the God Squad.

APPENDIX B: A CHRONOLOGY OF TELLICO

ISSUE: A dam on the Little Tennessee was proposed for its navigation, power, and economic benefits. Opposition to the project arose early, due to concern over fishing, recreation, Native American religious sites, and loss of agricultural land. After discovery of the snail darter, project opponents had to decide whether to abandon their old arguments and pin their hopes on a small fish. According to one observer, "opponents would have preferred a weapon like a bald eagle or a bear or a buffalo. But what they had was [a] fish."⁴²

CHRONOLOGY

DATE	EVENT
1936	A dam on the Little Tennessee River, to improve navigation and generate electricity, is first proposed by TVA.
1963	Now named the Tellico Project, TVA again proposes the dam. Acquisition of additional lands is included, in order to provide for industrial, commercial, and residential development. The cost of the revised project is estimated at \$41 million.
1966	Tellico Project is authorized.
1967	First annual appropriation for the project is passed. (Money is appropriated for each year thereafter.)
1971	Lawsuit filed, contending that Tellico's EIS was inadequate and violated NEPA. (Note: the 1973 ESA had not become a Federal law at this point.)
08/12/73	Dr. David Etnier of the University of Tennessee discovers snail darters in the stretch of the Little Tennessee that would be impounded by Tellico; he realizes that the fish is a species new to science.
10/09/75	Snail darter is listed as endangered under ESA.
02/18/76	<i>Hill v. TVA</i> filed; plaintiffs argue that Tellico violates ESA.
10/12/76	FWS issues biological opinion that Tellico, as proposed, would jeopardize the continued existence of the snail darter.

⁴²p. 189 in William B. Wheeler and Michael J. McDonald, *TVA and the Tellico Dam*. University of Tennessee Press. Knoxville. 1986. 290 p.

- 04/76 District court dismisses the cases on the merits; plaintiffs appeal, and the 6th Circuit issues an injunction preventing closure of the dam, but allowing construction to continue.
- 01/31/77 Appellate Court holds that ESA does apply to Tellico. It grants an injunction that stops the remaining 10% of construction except for structures that would be required even if project is never completed. TVA appeals to Supreme Court.
- 06/15/78 Supreme Court affirms decision of Appellate Court.
- 07/19/78 Senate passes ESA reauthorization; bill contains an exemption process, which creates an Endangered Species Committee (ESC), but no specific exemption for Tellico and Grayrocks.
- 09/30/78 Scheduled expiration of ESA authorization.
- 10/14/78 House passes ESA reauthorization; bill contains language with an exemption process, and specific language directing an expedited procedure for Tellico and Grayrocks.
- 10/14/78 House and Senate pass ESA conference report for S. 2899. Provisions on Tellico and Grayrocks require that (1) the ESC meet within 30 days of enactment; (2) exemption must be granted if stated provisions are satisfied; (3) decision must be made within 90 days of enactment, or the projects will be automatically exempted.
- 11/10/78 President Carter, despite encouragement from DOI for a veto, signs ESA reauthorization (P.L. 95-632).
- 12/08/78 ESC meets to consider exemption.
- 01/08/79 Hearings held in Knoxville, TN, and Washington, DC, on proposal for exemption.
- 01/10/79 Deadline for any comments for record for ESC deliberations.
- 01/19/79 Staff Report to ESC is issued for their use as background in determining whether to grant an exemption.
- 01/23/79 ESC rejects exemption for Tellico. The Chair of the ESC, Interior Secretary Cecil Andrus, states "Frankly, I hate to see the snail darter get the credit for stopping a project that was ill-conceived and uneconomical in the first place."
- 02/07/79 As ex officio Chairman of the ESC, Cecil Andrus signs the decision denying the exemption for Tellico.

- 02/08/79 If no decision had been made by ESC before this date, the Tellico project would have been automatically exempted.
- 06/18/79 Rep. John Duncan (TN) offers amendment to H.R. 4388 (Energy and Water Appropriations for FY80), exempting Tellico from ESA and other laws; the House accepts the language on voice vote, with little discussion.
- 07/17/79 Senate passes an amendment (53 yeas to 45 nays; roll call vote #180) to strike House language exempting Tellico from the requirements of ESA and from other laws. (A vote of "yea" was a vote in favor of the fish, farmers, and Indians; a vote of "nay" was a vote to finish the dam, exempt it from ESA, and proceed with development.)
- 09/10/79 The Senate recedes from its earlier amendment of 7/17, and agrees to the conference language which exempts Tellico from ESA as well as other laws. The vote is 48 "yeas" to 44 "nays"; a vote of "yea" is a vote for the dam and development; a vote of "nay" is a vote for the fish, farmers, and Indians (roll call vote #269).
- 09/25/79 President Carter signs the Energy and Water Development Appropriations (H.R. 4388, P.L. 96-69), expressing regret at doing so.
- 11/29/79 Workers at Tellico close the gates on the dam, allowing filling of the reservoir to begin.
- 07/05/84 FWS reclassifies snail darter as threatened, rather than endangered, based largely on new data on the distribution of the species. The notice also rescinds the designation of the Tellico Dam area as critical habitat, since the species no longer exists in that area. At the time of the notice, the fish was known from small populations at 9 locations in the Tennessee River watershed.

It is not yet determined as to whether the transplanting of the snail darter is actually effected, but it is well on its way, and to tear apart the Endangered Species Act to set a further precedent for a legislative treatment of a species I just do not think is the correct way to go. The wisdom of the author may not follow the line of the gentleman from Michigan that this is far more valuable to now convert this project on the current cost-benefit ratio to other uses. We must remember while much money has been spent, relatively little of that is in concrete. The overwhelming share of the money is in real estate, and this value is not to be lost if it is converted. So we do have, I think, an opportunity to give full consideration without this amendment. As has been said, this is just a procedure that we try to create in this legislation.

Mr. DUNCAN of Tennessee. Mr. Chairman, will the gentleman yield?

Mr. FORSYTHE. I yield to the gentleman from Tennessee.

Mr. DUNCAN of Tennessee. I thank the gentleman for yielding. Would the gentleman agree that on the amendments offered by the gentleman from Tennessee (Mr. BEARD) and adopted, that it would take at least a year or more to implement the review process?

Mr. FORSYTHE. I suspect that time frame is not that far off.

Mr. DUNCAN of Tennessee. I think I have shown my friend the Tellico Dam, and the concrete is all in except about \$1,800,000. It is ready to close. I could almost take my Boy Scouts down and close it myself. The gentleman said it is not much concrete. The concrete is there, and it is ready to close.

Mr. FORSYTHE. I said that the value of the \$100-plus million is not that much in concrete itself. It is in all of the other things, particularly in land acquisition. I would ask if, for instance, the Tennessee Valley Authority has applied for a delisting on the basis of the transplanting of the snail darter that might solve the whole problem.

Mr. DUNCAN of Tennessee. They have not. Our people want to get back to work. The TVA did not stop the dam; the court stopped the dam. It is up to the TVA whether they want to finish it or not. Once we give them the authority to go, a court injunction is in force, and we would like to finish it and, as I say, get our people back to work.

Mr. FORSYTHE. As I said, the report indicates the TVA and the Department of the Interior think it can be done without legislation.

Mr. DUNCAN of Tennessee. We have the right to use our wisdom in the House, and it can shorten the process by several months.

Mr. FORSYTHE. The gentleman does not even need this amendment, if TVA comes into compliance as a result of the transplanting taking place and the delisting.

Mr. DUNCAN of Tennessee. We will starve to death by a year from now.

The CHAIRMAN. The time of the gentleman has expired.

Mr. RONCALIO. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I would like to make a historical observation about these hallowed halls we work in and the ones on the other side of the Rotunda. Far and away the most famous American in the finest, most loyal, and dedicated sense, in my opinion, whoever came out of Nebraska was not William Jennings Bryan but George Norris. George Norris made great the ambition that made a politician out of me, because I worked for Senator Joseph C. O'Mahoney who worked with George Norris. He was the father of TVA, and the goodness that he brought was the preservation of our capitalistic system by giving it conscience and improving the balance between the social and the public and the private sector. I would be less than an ingrate if I sat down and did not speak for my friend, the gentleman from Tennessee, having just visualized his support for my dilemma in Wyoming against Nebraska, George Norris' home State.

I make this historical observation at this time as we carry on some 50 or 60 years later fighting over the very principles of law and need for law that Norris enunciated.

I do not know the answer to my dilemma and I do not know the answer here; but I believe my speaking here in behalf of my Tennessee friends is not inconsistent with my ideal that no one has the right to destroy species.

I read the report of the TVA that there are some 2,000 or 3,000 snail darters transported to Lake Hiawasse. If that is the fact situation, it ought to develop a quick decision by the Supreme Court or by the makers of the law here that they desire that direction to be taken.

Mr. STUDDS. Mr. Chairman, I move to strike the requisite number of words. I rise in opposition to the amendment.

Mr. Chairman, I do not really think the question before us is who was the best Senator from Nebraska, or the historic merits or demerits of the Tennessee Valley Authority.

The question before us in this amendment is not whether or not the Tellico Dam ought to proceed. It is not even whether the conversations that have been going on may result in the resolution of this dispute without much further delay.

The question really is whether or not there is any point, I think, in our proceeding to debate the bill before us and, effectively and eventually, if we continue to adopt amendments like this, whether there is any point in extending the authorization of this statute.

Let me read again the amendment pending before us. It is only two sentences long. It is quite simple and straightforward. The first sentence states simply:

The provisions of this Act shall not apply with respect to the construction and operation of the Tellico Dam and Reservoir project in Tennessee.

The second sentence reads:

The harassment, harm, killing, or wounding, if any, of any endangered species or threatened species attributable to the construction or operation of such projects shall not be deemed to be a taking of any endangered species within the meaning of this Act.

It is a complete and total waiver of the Endangered Species Act. And it goes even beyond the preceding amendment of the gentleman from Wyoming and says that, even if the construction of this project does result in the harm or the killing of any endangered species, we will proceed in any event.

I would suggest to this committee, as I say, regardless of whether or not a species is endangered by this project, and regardless of whether the project ought to proceed with construction, that Members ought to give very careful thought, indeed, before giving their support to an amendment which, in effect, constitutes a repeal of the heart and soul of this statute. Either we intend to continue with some respect for other forms of life and to continue our determination that we will not take the ultimate arrogant step, in my opinion, of consciously and deliberately exterminating other forms of life, or we do not.

I would ask, before voting on this amendment, that you read it with care. The whole purpose of the bill before the committee at this time is to establish a far more satisfactory procedure than we have had in the past for resolving the kind of dispute that has led to the Tellico Dam controversy in Tennessee. We do not need this procedure. We do not need this act if every time there is a dispute the Congress of the United States is going to waive all the provisions of the act and ignore all the resolution of conflict procedures which we have spent many months putting together and simply determine, as this amendment would have us do, that there is no endangered species. The amendment even goes further and says that even if there is an endangered species and if the project would kill it, we want to do it anyway.

I would like to think there is a certain amount of humility left in us and we ought to assert it by defeating this amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Tennessee (Mr. DUNCAN).

The question was taken; and on a division (demanded by Mr. DUNCAN of Tennessee) there were—ayes 34, noes 17.

RECORDED VOTE

Mr. STUDDS. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 231, noes 157, not voting 42, as follows:

[Roll No. 920]

AYES—231

Abdnor	Bowen	Cleveland
Addabbo	Breaux	Cochran
Alexander	Breckinridge	Coleman
Anderson,	Brinkley	Collins, Ill.
Calif.	Brooks	Collins, Tex.
Anderson, Ill.	Broomfield	Conable
Andrews, N.C.	Brown, Ohio	Cornwell
Andrews,	Broyhill	Cotter
N. Dak.	Buchanan	Coughlin
Annunzio	Burgener	Cunningham
Archer	Burleson, Tex.	D'Amours
Ashbrook	Burlison, Mo.	Daniel, Dan
Barnard	Butler	Daniel, R. W.
Bauman	Caputo	de la Garza
Beard, Tenn.	Carter	Delaney
Benjamin	Cederberg	Dent
Bennett	Chappell	Derwinski
Bevill	Clausen,	Devine
Boggs	Don H.	Dicks
Bolling	Clawson, Del	Dornan

Duncan, Oreg.
Duncan, Tenn.
Edwards, Ala.
Edwards, Okla.
English
Ensborn
Ertel
Evans, Colo.
Evans, Del.
Evans, Ga.
Evans, Ind.
Fary
Filippo
Flood
Flowers
Foley
Ford, Tenn.
Fountain
Fuqua
Gammage
Gaydos
Gephardt
Gialmo
Gibbons
Gillman
Ginn
Goldwater
Gonzalez
Goodling
Gore
Grassley
Gadger
Guyer
Hagedorn
Hall
Hammer-
schmidt
Hanley
Hansen
Harrington
Harsha
Hefner
Hefel
Hightower
Hillis
Holland
Holt
Horton
Hubbard
Huckaby
Hyde
Jacobs
Jenkins
Jenrette
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Jones, Okla.

Jones, Tenn.
Kasten
Kazen
Kelly
Kindness
Krueger
LaFalce
Lagomarsino
Latta
Leach
Lederer
Levitas
Livingston
Lloyd, Calif.
Lloyd, Tenn.
Long, La.
Lott
Luken
Lundine
McCormack
McDonald
McEwen
McKay
Mahon
Marriott
Martin
Mathis
Mattox
Mazzoli
Michel
Miller, Ohio
Mollohan
Montgomery
Moore
Moorhead,
Calif.
Moorhead, Pa.
Murphy, Ill.
Murtha
Myers, John
Natcher
Nix
O'Brien
Oberstar
Perkins
Pickle
Poage
Pressler
Preyer
Price
Quayle
Quillen
Rahall
Rallsback
Regula
Rhodes
Risenhoover
Roberts

NOES—157

Alaka
Ambro
Ashley
Aspin
AuCoin
Bafalis
Baldus
Baucus
Beard, R.I.
Bedell
Bellenson
Blaggi
Bingham
Blanchard
Blouin
Boland
Bonior
Bonker
Brademas
Brodhead
Brown, Calif.
Brown, Mich.
Burke, Mass.
Burton, John
Burton, Phillip
Carr
Cavanaugh
Clay
Conte
Conyers
Corcoran
Corman
Cornell
Danielson
Davis
Dellums
Derrick
Dingell
Dodd
Downey
Drinan
Early
Eckhardt
Edgar
Edwards, Calif.

Robinson
Roncalio
Rose
Rostenkowski
Rousselot
Runnels
Ruppe
Santini
Satterfield
Schroeder
Schulze
Sebellus
Shuster
Sikes
Simon
Sisk
Skelton
Slack
Smith, Nebr.
Snyder
Spence
Stangeland
Stanton
Steed
Stockman
Stump
Symms
Taylor
Thompson
Thone
Thornton
Trible
Tucker
Ullman
Vander Jagt
Volkmier
Waggonner
Walker
Walsh
Wampler
Watkins
White
Whitehurst
Whitley
Whitten
Wiggins
Wilson, Bob
Wilson, C. H.
Wilson, Tex.
Wright
Wylye
Yatron
Young, Alaska
Young, Fla.
Young, Mo.
Young, Tex.
Zablocki
Zeferetti

Stark
Steers
Steiger
Stokes
Stratton
Studds
Traxler
Tsongas

Udall
Van Deertlin
Vanik
Vento
Walgren
Waxman
Weaver
Weiss

Whalen
Winn
Wirth
Wolff
Wylder
Yates

NOT VOTING—42

Ammerman
Applegate
Armstrong
Badham
Burke, Calif.
Burke, Fla.
Carney
Chisholm
Cohen
Crane
Dickinson
Diggs
Flynt
Frey
Garcia
Heckler
Ichord
Ireland
Le Fante
Lehman
Lujan
McFall
Marienée
Meeds
Mikva
Milford
Mitchell, Md.
Moss
Murphy, N.Y.
Myers, Michael
Neal
Nichols
Oakar
Pettis
Pursell
Quile
Rudd
Sarasin
Shipley
Skubitz
Teague
Treen

The Clerk announced the following pairs:

On this vote:

Mr. Crane for, with Mrs. Heckler against.
Mr. Dickinson for, with Mr. Garcia against.
Mr. Frey for, with Mr. Mikva against.
Mr. Rudd for, with Mrs. Burke of California against.

Messrs. MINISH, PATTEN, and WOLFF changed their vote from "aye" to "no."

So the amendment was agreed to.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MRS. MEYNER

Mrs. MEYNER. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mrs. MEYNER: Page 30, strike out line 20 and all that follows through page 31, line 17.

My amendment is a simple one. It merely strikes section 10 from the bill. This provision exempts raptorial birds—birds of prey—from the protection of the Endangered Species Act. It is an unprecedented, unnecessary, and damning addition to a law that has been carefully drafted as a comprehensive national policy. Unlike the rest of this bill, and the Endangered Species Act itself, section 10 is a special interest provision that caters to those who wish to exploit the law for commercial purposes.

Section 10 asks us to include, for the first time, a legislatively mandated exemption to the act. The precedential value of this exemption is, at best, damaging. The listing of endangered species has always been within the jurisdiction of the Department of the Interior. If the evidence indicated compelling reasons to alter the classification of raptors, administrative mechanisms to accomplish that reclassification already exist.

Mr. Chairman, the section 10 exemption applies to raptors, and their progeny, held in captivity at the time of the enactment of H.R. 14104. Supporters of the exemption claim that since a bird must be captively bred or held at the time of enactment, the exemption will not have an effect on the populations of species in the wild. For this reason, they claim, the exemption does not contradict the intent of the Endangered Species Act. However, my amendment is prompted by the fact that it is almost impossible to prove that a bird has been stolen from the wild, if its owner claims that it was in captivity at the time the law was en-

acted. It is for this reason that Interior has not changed its regulations.

Raptors are valuable birds. Because they can be sold for as much as \$5,000 per bird, there is a strong incentive to steal them from the wild. In fact, California conservationists have had to resort to installing electronic surveillance systems in nests to guard baby peregrine falcons from overzealous falconers.

Mr. Chairman, section 10 is supported by a small special interest group. I see no reason to enact a special provision for this group, many of whom have exploited raptorial birds in the past. One of the leading supporters of this exemption was convicted of illegal importation of peregrine falcons from Spain in 1974.

Mr. Chairman, I wish to emphasize that I am not attempting to outlaw falconry. There are plenty of unendangered species of birds that falconers are able to use.

The Endangered Species Act is crucial for the protection of all endangered species. It is contradictory to the intent of the act to begin granting exemptions.

I ask my colleagues to join me today in striking section 10, an unprecedented and unwarranted exemption to the existing law.

Mr. DRINAN. Mr. Chairman, will the gentleman yield?

Mrs. MEYNER. I yield to the gentleman from Massachusetts.

● Mr. DRINAN. Mr. Chairman, I rise in support of the amendment offered by my colleague, Mrs. MEYNER, to strike the exemption of raptors (birds of prey) from the provisions of the Endangered Species Act.

I want in no way to hinder the reauthorization of this Act, but I do hope that the Members of the House will make clear for the record their disapproval of this specific exemption for raptorial birds.

This exemption, which made its way into the Senate language, clearly does not speak to the controversial matters surrounding the authorization of the Endangered Species Act.

While the loss of protection is meant to be limited to those birds held in captivity, the poaching of these rare and valuable species is a worldwide concern. The specific exemption of raptors, such as the peregrine falcon, from the protection of the Endangered Species Act in international commerce can only exacerbate the problem.

I ask the support of my colleagues to strike this exemption. ●

Mr. MAGUIRE. Mr. Chairman, will the gentleman yield?

Mrs. MEYNER. I yield to the gentleman from New Jersey.

Mr. MAGUIRE. Mr. Chairman, I thank the gentleman for yielding.

I also wish to associate myself with her remarks.

I think it is not only an excellent amendment; it is an absolutely essential amendment because some of these birds are in danger of becoming extinct. There is not any reason in the world that these particular birds should be excluded from the coverage of the act, and I do hope the House will join with the gentleman from New Jersey in closing what really

95TH CONGRESS
1ST SESSION

H. R. 5879

IN THE HOUSE OF REPRESENTATIVES

MARCH 31, 1977

Mr. GORE introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

A BILL

To exempt the Columbia Dam and Reservoir in Tennessee from the provisions of the Endangered Species Act of 1973.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That section 10 of the Endangered Species Act of 1973 (16 U.S.C. 1539) is amended by adding at the end thereof the following new subsection:

“(f) COLUMBIA DAM AND RESERVOIR.—The provisions of this Act shall not apply with respect to the construction and operation of the Columbia Dam and Reservoir, which are part of the Duck River project in Tennessee. Any harassment, harm, killing, or wounding of any endangered species or threatened species attributable to the construction of oper-

100TH CONGRESS
1ST SESSION

H. R. 5878

A BILL

To provide for a feasibility study on establishing price, allocation, and export controls on coal, natural gas, and certain other energy

1 ation of such dam and reservoir shall not be deemed to be
 2 a taking of any endangered species within the meaning of
 3 section 9 (a) (1) of this Act, or a taking of any threatened
 4 species if such taking is prohibited by regulations issued
 5 pursuant to section 4 (d) of this Act.”.

U.S. GOVERNMENT
 PRINTING OFFICE

H. R. 5879

A BILL

To exempt the Columbia Dam and Reservoir in
 Tennessee from the provisions of the En-
 dangered Species Act of 1973.

By Mr. Gore

March 31, 1977

Referred to the Committee on Merchant Marine and
 Fisheries

TENNESSEE (cont'd)

Animal Candidate Review for Listing as Endangered or Threatened Species (cont'd):

Fowler's cave beetle - U
 Lee County cave beetle - U
 Searcher cave beetle - U
 Baker Station cave beetle - U
 Grassy Cove cave beetle - U
 Long-headed cave beetle - U
 Norton's cave beetle - U
 Western cave beetle - U
 Pale cave beetle - U
 Ridgetop cave beetle - U
 Nobletts cave beetle - U
 Payne's cave beetle - U
 Tiny cave beetle - U
 Lean cave beetle - U
 Meridith cave beetle - U
 Simple cave beetle - U
 Indian Grave Point cave beetle - U
 Union County cave beetle - U
 Blowing cave beetle - U
 Wallace's cave beetle - U

BUTTERFLIES & MOTHS:
 Noctuid moth (no common name) - U

Looper moth (no common name) - U
 Diana fritillary (butterfly) - U

CADDISFLIES:
 Stannard's agarodes caddisfly - U
 Helma's net-spinning caddisfly - U
 Buffalo Springs caddisfly - U
 Knoxville hydroptilan micro caddisfly - U
 Caddisfly (no common name) - U

SPIDERS:
 Grassy Creek Cave spider - U
 Crystal Caverns cave spider - U
 Valentine's cave spider - U

ISOPODS:
 Nickajack Cave isopod - U

AMPHIPODS:
 Norton's cave amphipod - U

CRAZFISHES & SHRIMPS:
 Chickamauga crayfish - U
 Obey crayfish - U

Total # Unknown = 101
 Total # Declining = 33
 Total # Stable = 5
 Total # Improving = 1

KEY

U = Unknown

D = Declining

S = Stable

I = Improving

Plant Candidate Review for Listing as Endangered or Threatened Species:

Fir, Fraser - 2
 Foxglove, false, auriculate - 2
 False-foxglove, Shinner's - 2
 Ansonia tabernaemontana var. gattingeri
 (no common name) - 2
 Rock cress, large - 2
 Sutichwort, water - 1
 Armoracia aquatica (no common name) - 2
 Astilbe crenatiloba (no common name) - 2
 Astragalus tennesseensis (no common name) - 2
 Aureolaria patula (no common name) - 1
 Bazzania nudicaulis (no common name) - 2
 Buckleya distichophylla (no common name) - 2
 Cacalia rugelia (no common name) - 2
 Calamagrostis cainii (no common name) - 2
 Sand grass (Calamovilfa arcuata) - 1
 Bitter cress, mountain - 2
 Sedge, Barratt's - 3C
 Carex decomposita (no common name) - 3C
 Carex purpurifera (no common name) - 2
 Cimicifuga rubifolia (no common name) - 2
 Coreopsis latifolia (no common name) - 3C
 Haw - 2
 Croton, Alabama - 2
 Cypripedium kentuckiense (no common name) - 2
 Larkspur, tall - 2
 Waterweed, Nashville - 1*
 Elymus svensoni (no common name) - 2
 Eriogonum longifolium var. harperi
 (no common name) - 1
 Eupatorium luciae-brauniae (no common name) - 2
 Fimbristylis, Harper's - 2
 Avers, bent - 2
 Manna grass, Smoky Mountains - 2
 Lichen, rock gnome - 2

Helianthus eggertii (no common name) - 2
 Helianthus glaucophyllus (no common name) - 3C
 Helianthus smithii (no common name) - 3C
 Hexastylis contracta (no common name) - 2
 Juncus trifidus ssp. carolinianus
 (no common name) - 2
 Leavenworthia exigua var. exigua
 (no common name) - 2
 Glade cress (Leavenworthia exigua var. lutea) - 2
 Bladder-pod, Short's - 2
 Bladder-pod, Spring Creek - 1
 Bladder-pod, Stones River - 1
 Lily, Gray's - 2
 Pondspice - 2
 Liphocolea appalachiana (no common name) - 2
 Lobelia appendiculata var. gattingeri
 (no common name) - 2
 Loosestrife - 2
 Barbara's buttons, large-flowered - 2
 Minuartia godfreyi (no common name) - 2
 Mnium carolinianum (no common name) - 2
 Muhly, Torrey's - 3C
 Nestronia umbellula (no common name) - 2
 Neviusia alabamensis (no common name) - 2
 Paxistima canbyi (no common name) - 2
 Phlox, cleft - 2
 Plagiachila caduciloba (no common name) - 2
 Plagiachila echinata (no common name) - 2
 Plagiachila sharpii (no common name) - 2
 Plagiachila sullivantii (no common name) - 2
 Plagiachila virginica var. caroliniana
 (no common name) - 2
 Plantain, heart-leaved - 3C
 Platianthera integrilabia (no common name) - 2
 Polymnia laevigata (no common name) - 3C
 Prenanthes barbata (no common name) - 2

Pterigynandrum sharpii (no common name) - 2
 Rubus whartoniae (no common name) - 2
 Saxifrage - 3C
 Saxifrage, Gray's - 2
 Chaffseed, American - PE
 Stonecrop, Nevius' - 2
 Sedum rosea var. roanensis (no common name) - 3B
 Silene ovata (no common name) - 2
 Rosinweed - 2
 Sphaeralea angusta (no common name) - 2
 Sphenolobopsis pearsoni (no common name) - 2
 Spiraea, Virginia - PT
 Synandra - 3C
 Farnesflower, limestone - 2
 Tortula ammoniana (no common name) - 2
 Clover (Trifolium sp. nov./ined) - 2
 Trillium, least, Ozark - 2
 Trillium pusillum var. ozarkanum
 (no common name) - 2
 Arrowwood - 2

Total # 1 = 6
 Total # 1* = 1
 Total # 2 = 64
 Total # 3B = 1

Total # 3C = 10
 Total # PE = 1
 Total # PT = 1

KEY

1 = Taxa for which there is substantial info. on biological vulnerability and threat(s) to support proposals to list them.
*1** = Possibly Extinct Taxa
2 = Taxa for which there is some evidence of vulnerability, but not enough data to support listing proposals at this time.
3B = Not a candidate for listing - Taxa does not meet the definition of "species."
3C = Not a candidate for listing - Taxa has proven to be more abundant than previously believed.
PE = Taxa already proposed to be listed as Endangered.
PT = Taxa already proposed to be listed as Threatened.

Total # of Listed and Candidate Species
 for the State of Tennessee = 291

Source: Federal Register

Prepared by: The National Endangered Species Act Reform Coalition
 1050 Thomas Jefferson St., NW, Sixth Floor, Washington, DC 20007
 (202) 333-7481

TENNESSEE

(updated 7/8/92)

Listed Endangered and Threatened Species:

Eagle, bald - E
Falcon, American peregrine (Eastern)-E(CH)
Falcon, Arctic peregrine - T
Darter, slackwater - T(CH)
Pearly mussel, pink mucket - E
Pogonia, small whorled - E

MAMMALS:
Bat, gray - E
Bat, Indiana - E(CH)
Squirrel, Carolina northern flying - E
Wolf, red - E

BIRDS:
Tern, least (interior population) - E
Woodpecker, red-cockaded - E

FISHES:
Chub, slender - T(CH)
Chub, spotfin - T(CH)
Dace, blackside - T
Darter, boulder (=Elk River) - E

Darter, snail - T
Loggerhead, Conasauga - E(CH)
Madtom, Smoky - E(CH)
Madtom, yellowfin - T(CH)
Shiner, Blue - T
Sturgeon, pallid - E

SNAILS:
Snail, painted snake coiled forest - T

CLAMS:
Fanshell - E
Mussel, ring pink - E
Pearly mussel, Alabama lamp - E
Pearly mussel, Appalachian monkeyface - E
Pearly mussel, birdwing - E
Pearly mussel, cracking - E
Pearly mussel, Cumberland bean - E
Pearly mussel, Cumberland monkeyface - E
Pearly mussel, dromedary - E
Pearly mussel, tubercled-blossom - E
Pearly mussel, green-blossom - E

Pearly mussel, orange-footed - E
Pearly mussel, pale lilliput - E
Pearly mussel, purple cat's paw - E
Pearly mussel, turgid-blossom - E
Pearly mussel, white wartyback - E
Pearly mussel, yellow-blossom - E
Pigtoe, fine-rayed - E
Pigtoe mussel, Cumberland - E
Pigtoe, rough - E
Pigtoe, shiny - E
Rifle shell, tan - E

INSECT:
Cricket, prairies - T

CRUSTACEANS:
Crayfish, Nashville - E

PLANTS:
Aster, Ruth's golden - E
Groundplum, Guthrie's - E
Avena, spreading - E
Bluet, Roan Mountain - E
Coneflower, Tennessee purple - E

Cumberland, Rosemary - T
Fern, American hart's-tongue - T
Goldenrod, Blue Ridge - T
Prairie-clover, leafy - E
Pitcher-plant, green - E
Potato-bean, Price's - T
Sandwort, Cumberland - E
Skullcap, large-flowered - E
Spiraea, Virginia - T
Grass, yellow-eyed, Tennessee - E

Total # Endangered = 46
Total # Threatened = 15

KEY

E = Endangered

T = Threatened

CH = Critical Habitat

Animal Candidate Review for Listing as Endangered or Threatened Species:

MAMMALS:
Southern pygmy shrew
Southern rock vole - S
Southeastern myotis (bat) - U
Eastern small-footed bat - D
Eastern woodrat - D
Rafinesque's (=southeastern) big-eared bat - U
Long-tailed shrew
Southern water shrew - U
New England cottontail rabbit - U

BIRDS:
Northern goshawk - S
Bachman's sparrow - U
Henslow's sparrow - D
Cerulean warbler - D
Loggerhead shrike - U
Black rail - U
Appalachian Bewick's wren - D

REPTILES:
Alligator snapping turtle - U
Northern pine snake - U

AMPHIBIANS:
Hellbender - D
Dark-sided salamander - U
Tennessee cave salamander (incl. Berry Cave salamander)-U

FISHES:
Lake sturgeon - U
Crystal darter - U
Blue sucker - S
Duskytail darter - D
Jewel darter - U
Coppercheek darter - U

Coldwater darter - U
Striped darter - U
Trispot darter - D
Tusculumbia darter - U
Barrens topminnow - D
Sturgeon chub - D
Lined chub - U
Sicklefin chub - D
Palezone shiner - U
Burthead shiner - U
Saddled madtom - D
Frecklebelly madtom - S
Pygmy madtom - D
Longhead darter - D
Bronze darter - U
Olive darter - U
Paddlefish - U

CLAMS & MUSSELS:
Cumberland elktoe (mussel) - D
Spectacle case (pearly mussel) - D
Angled riffleshell
Cumberlandian combshell - D
Oyster mussel - D
Acornshell (=acorn pearly mussel)
Forkshell (=Lewis' pearly mussel)
Tennessee riffleshell (=nearby pearly mussel)
Snuffbox mussel - D
Barrens heelsplitter (mussel) - D
Tennessee heelsplitter (mussel) - D
Slabside pearlymussel - D
Alabama moccasinshell (mussel) - U
Coosa moccasinshell (mussel) - U
Clubshell (mussel) - D
Southern acornshell (mussel) - U

Upland combshell (mussel) - U
Ovate clubshell (mussel) - U
Southern clubshell (mussel) - U
Orange-nacre mucket - D
Tennessee clubshell (mussel) - D
Pink pigtoe (mussel) - D
Triangular kidneyshell (mussel)-D
Fine-lined pocketbook (mussel)-U
Rough rabbitsfoot (mussel) - D
Salamander mussel - D
Purple lilliput (mussel) - D
Rayed bean (mussel) - D
Purple bean (=Fine-rayed purple pearly mussel) - D
Dark pigtoe (mussel) - U
Southern pigtoe (mussel) - U

SNAILS:
Knotty elimia (snail) - U
Toothy coil (snail) - U
Spiny riversnail - I
Boulder (=crass river) snail - U
Onyx rocksnail (=mainstream river snail)-U
Smooth rocksnail - U
Armored rocksnail (=armigerous river snail) - U
Armored rocksnail - U
Helmet rocksnail (=Dutton's river snail) - U
Ornate rocksnail (=geniculate river snail)-U
Rugnose rocksnail (=Jay's river snail) - U

Warty rocksnail (=Elk River file snail) - U
Muddy rocksnail (=rugged river snail) - U
Varicose rocksnail (=verrucose file snail)-U
Clingman covert (snail) - U
Sculpted supercoil (snail) - U
Roan supercoil (snail) - U
Rugged hornsnail - U
Corpulent hornsnail - U
Shortspire hornsnail - U
Telescope hornsnail - U
Royal (=obese) marstonia (snail)- S
Sparrow pebblesnail - U
Opaque pebblesnail - U

MAYFLIES:
Spiculose scratellian mayfly - U

DRAGONFLIES & DAMSELFLIES:
Cherokee clubtail (dragonfly) - U
Elusive clubtail (dragonfly) - U
Tennessee clubtail (dragonfly) - U
Bronze clubtail (dragonfly) - U
Midget snaketail (dragonfly) - U

BEEYLES:
Sixbanded longhorn beetle - U
Benderman's cave beetle - U
Echo cave beetle - U
Catherine's cave beetle - U
Engelhardt's cave beetle - U

(continued on next page)

To: JACARIE

From: PAM

The lines we have been using
are:

1). The Tellico Dam was 90%
before the Endangered Species Act
was invoked - we voted for the jobs.

2). The snail darter was thriving
in the nearby Hiwassee River -
thereby raising the possibility that
the TN river was not the critical
habitat for the fish. Call if you have
? S - P

***** -JOURNAL- ***** DATE OCT-09-1992 ***** TIME 11:00 *****

DATE/TIME = OCT-09 10:58

JOURNAL NO. = 14

COMM.RESULT = OK

PAGES = 02

DURATION = 00:02'04

MODE = RCU

STATION NAME =

TELEPHONE NO. =

RECEIVED ID =

RESOLUTION = STANDARD

VOICE CONTACT REQUESTED.

501 370
3438

* In 1975, TVA, in concert with the Fish and Wildlife Service, began transplanting snail darters from the little Tennessee River (where the Tellico Dam was) to the nearby Hiawassee River. The Interior Department announced in 1978, before the Gore votes on ESA, that those 710 darters had multiplied to 3,700. The number of darters in the Tennessee river had decreased to 500, most probably because the construction was already 90% completed on the dam. Theoretically, the Hiawassee, which was not affected by the Tellico Dam, was a critical habitat for the snail darter, rather than the little Tennessee, at the time the ESA votes were cast by Gore.

* The vote to exempt Tellico that Gore voted on was in 1978. The vote was not close. 231 Representatives voted to exempt the Tellico and it passed. The God Squad met AFTER this vote, in Feb. of 1979. The provision to override the god squad was put through in June by Rep. Duncan - no vote was recorded on this. The Senate made the final decision in conference to allow the Tellico Dam to be exempted. Gore NEVER voted to override the God Squad.

SCA: Tellico Dam was subject to
ESA.

All votes — No — — Exempt from
ESA.



*Katie: given your interest
in ESA - I thought this might
interest you. - Lynne*

Congressional Research Service • The Library of Congress • Washington, D.C. 20540

November 2, 1992

TO : Attention:

FROM : M. Lynne Corn
Specialist
Environment and Natural Resources Policy Division

SUBJECT : Issues in the Reauthorization of the Endangered Species Act

*released with
permission of client*

As we discussed, I have prepared an outline of the major issues likely to arise in the reauthorization of the Endangered Species Act (ESA). While the origin of the list is based on my best professional judgment of the likely issues, I have shared the outline (without revealing the origin of the request) with a leading environmentalist, a lobbyist for a coalition supporting economic reforms, a committee staffer, and a Fish and Wildlife Service employee. Based on their suggestions, I have added or modified a few issues.

The basic format of the outline is a series of general questions regarding a broad issue area, followed by a series of options or sub-issues within that area. The outline is followed by a series of major questions whose responses may be relevant to assessing these issues. As you can see, the majority of these questions are policy questions, rather than scientific or technical questions. This emphasis is not too surprising, given the debate on the ESA over the last several years. Please do not hesitate to call me at 7-7267 if I can be of any further help.

ENDANGERED SPECIES ACT ISSUES¹

- I. **Is there a need for major change?**
 - A. No: Data on operation of ESA (especially 1992 GAO report)
 - B. No: Environmentalists' ethical and aesthetic arguments for species conservation
 - C. No: Scientists' arguments on "torn fabric" of planet's biodiversity
 - D. Yes: Coalition's arguments on regulatory and economic impacts
- II. Should the listing process be changed?
 - A. Speeding up the process for listing of candidate species
 - B. Including economics in criteria for listing²
 - C. **Peer review of listing decisions by outside scientists (and non-scientists?)**
 - D. Grouping of listings--by taxonomy or ecosystem
 - E. Allowing populations of invertebrates and plants the same protections now afforded vertebrate populations
 - F. Defining a subspecies and a population segment
 - G. **Protecting populations and subspecies, when other parts of species are doing relatively well**
- III. Should the processes of designating Critical Habitat (CH) and preparing Recovery Plans (RP) be changed?
 - A. Matching timing of development of recovery plans and critical habitat designation, requiring CH and RP to be adopted together, and setting a time limit on designations and adoption of recovery plans
 - B. **Developing RP and CH proposals as options, much like the EIS process and requiring formal adoption of a preferred alternative, like an EIS**
 - C. **Subjecting CH and RP to outside peer reviews**
 - D. Providing for petitions to list CH, when there was no designation at time of listing
 - E. Reviewing species without CH periodically and designating CH, if now prudent or determinable
 - F. **Requiring least cost recovery plans**
 - G. Requiring Federal agencies to implement recovery plans
- IV. Should Congress modify requirements for consultation for Federal agencies and for incidental take permits for private citizens?

¹**Bold** entries indicate issues which, in the opinion of the author, are likely to be especially contentious.

²Only a year ago, this promised to be a hot issue, with economic considerations during listing opposed by environmentalists, and supported by loggers, farmers, real estate interests, etc. Now it appears that only a few groups are asking for economic analysis of a proposed listing; the focus of proposals for economic criteria is now after listing, combined with increases in procedural hurdles before listing.

- A. **Where ESA and other laws affecting an agency conflict, requiring action agency to balance the two laws for the benefit of the public**, rather than requiring agencies to use existing authorities to carry out the ESA's purposes
 - B. Considering progress toward recovery in making jeopardy decisions
 - C. Making process of obtaining incidental take permits for private citizens (under Sec. 10) more similar to requirements for Federal agencies (under Sec. 7) and assisting private landowners wanting to develop Habitat Conservation Plans (HCPs), perhaps with revolving loan fund
- V. Should Congress pass laws to protect whole ecosystems?
- A. Encouraging broader consideration of ecosystems at time of listing, designation of critical habitat, recovery plans, etc.
 - B. **Listing whole ecosystems under ESA**
 - C. **Listing whole ecosystems under some entirely new Act**
- VI. Should funding of ESA be increased³ and should the financial and other incentives for State and local action be increased or modified?
- A. Funding to speed pace of listing decisions
 - B. Increasing assistance for existing State programs
 - C. **Creating new local programs to provide for protection of species not yet listed, in return for Federal incentives, such as regulatory relief of some type**
 - D. **Creating a fund to encourage conservation of candidate species**
 - E. Directing financial aid to communities heavily affected by listing and protection of a species; creating source of funding for this effort
- VII. Should Congress modify enforcement and/or provide further legal protections to those affected by the ESA?
- A. **Aiding/compensating landowners whose property values may be diminished**
 - B. In light of *Lujan v. Defenders*, broadening standing of citizens to sue
 - C. Increasing (or decreasing) applicability of ESA to foreign species (i.e., modifying Sec. 7 (2)(a))
 - D. Authorizing Federal government to recover damages for harm to listed species
 - E. Subjecting decisions to list to citizen suits (decisions not to list now are)

³This will be part of the debate over authorization ceilings, but the real controversy is more likely to occur within the annual appropriations process. An informal survey of leaders on various sides of the ESA debate suggests that nearly all would like to see higher spending--though on different things. Note that proposals to increase citizen involvement (through more field hearings, presentation of options, etc.), provide for peer review, revisit CH designations, etc., are all likely to add important funding and personnel requirements to the agencies' budgets.

- VIII. Miscellaneous
 - A. Reducing effects of ESA on agriculture
 - B. Easing requirements to obtain exemptions

Crucial Questions in ESA debate

I. Is there a need for major change?

Are the cases of the spotted owl and Columbia River salmon unusual? Of the more than 700 species listed under ESA, how many have little or no economic impact? How many have had a major impact, positive or negative?

Scientists argue that ecosystems can gradually be shredded, and major portions could cease to function as individual species are lost. They make the following analogy: if one cuts a small hole in a shirt, it is still a shirt. But after a large number of such holes, it is no longer a shirt but a rag. What specific examples are there of the collapse of an ecosystem through loss of species, and what were the known consequences to human populations?

What data exist to tie ESA to specific damaging economic consequences? How confidently can one separate effects of ESA from the background noise of general economic trends?

II. Should the listing process be changed?

Should listing decisions consider criteria other than science? If so, how? What happens if a species should be listed on scientific grounds, but flunks on economic grounds?

Should listing proposals be grouped by habitat? What would be the advantages and disadvantages of such a system and how, specifically, could it be organized? What would happen if, after several species were listed in, say, a major river system, another species was suddenly found to warrant protection? Would it have to wait? For what--some specified interval? A minimum number of other candidates?

If Congress decides to institute peer review of listing decisions under ESA, how would such a system work? For poorly studied groups with limited numbers of experts, how could sufficient peers be found? What is a peer? Should the definition be broad enough to include experts who are not field scientists or other experts on the species group? Should peers be paid for this work, and if not, how would sufficient help be found?

What would be the consequences of listing vertebrates at the species level only? Or at the subspecies level? Or should invertebrates and plants also be eligible for listing at the level of populations? Provide examples of how current listing decisions would probably have changed if either vertebrate listing options were narrowed or invertebrate and plant listing options were broadened.

III. Should the processes of designating Critical Habitat (CH) and preparing Recovery Plans (RP) be changed?

Committees now considering CH are subject to the Administrative Procedures Act, but those considering RPs are not. Would a blending of the processes for the two have important legal implications, and if so what would they be?

Is it possible for FWS and NMFS to catch up on the current backlog of RPs in a few years? If RPs and CHs had to be proposed with various options, how would this affect the staffing requirements of FWS and NMFS?

Would a requirement that RPs are designed on a least-cost basis have any important effect on the contents of RPs? Are RPs already least-cost choices? Would any previous recovery plans be likely to change if they had been considered on such a standard? If a least cost standard is applied, is it likely to conflict with the ESA's current standards for the development of an RP, and if so, how?

IV. Should Congress modify requirements for consultation for Federal agencies and for incidental take permits for private citizens?

How could an agency head balance the requirements of the agencies' own laws versus the ESA, as some have suggested? Should that balancing test be subject to input from FWS or NMFS? How? Should the result be subject to the courts? If so, who would have standing to sue?

Currently, Federal agencies simply consult with FWS (or NMFS) about a proposed action that will or might result in a taking, and if FWS determines that it will not jeopardize the species, the agency can proceed. But the private owners must develop a habitat conservation plan (HCP) in order to obtain the incidental take permit. Should these requirements for Federal and non-Federal entities be "equalized"?

V. Should Congress pass laws to protect whole ecosystems?

Many observers complain that in dealing with the ESA, they want to "get ahead of the game." What is the meaning of that phrase, and how would they achieve it, given a constantly changing ecological and economic environment?

Some seek protection at an ecosystem level. What *is* an ecosystem? How can a boundary be drawn around one, or should there even be a boundary? An advantage or disadvantage of ESA, depending on the observer's point of view, is that it does not follow the boundaries of federally owned lands, but instead affects species wherever they are found. Would ecosystems, like endangered species, be protected regardless of location, and if so, what does protection mean, if the land is not federally owned?

Does debate over protection of wetland ecosystems teach us anything about this type of controversy? For example, one of the rarest ecosystems remaining in the U.S. is the native tall grass prairie. Most, if not all, of the remaining examples are in private hands. If this ecosystem were declared threatened or endangered, what would that mean for the various owners of tall grass prairie? Should the Federal government buy the land? If not, what happens to it? What is allowed or prohibited if the ecosystem is protected?

Would ecosystem protection best be accomplished under a new title of ESA? Or some entirely new act?

VI. Should funding of ESA be increased and should the financial and other incentives for State and local action be increased or modified?

How could an assistance program to people wanting to develop an HCP best be financed? How can State and local governments be encouraged to cooperate with private landowners to develop multi-species plans?

What sort of incentives (financial, regulatory, technical assistance, etc.) would increase local participation in programs to conserve species that are not yet listed?

If monitoring of incentive programs demonstrated that conservation goals were not being met, how could FWS assure compliance and/or increase the requirements of the program (depending on the nature of the problem)?

If Congress decides to provide special assistance to communities affected by the listing of T&E species, how can such assistance be funded? What standards would trigger the assistance program?

VII. Should Congress modify enforcement and/or provide further legal protections to those affected by the ESA?

Should property owners affected by listed species receive compensation if the species' protection diminishes the value of their property? If so, how could such a program be implemented, and what is estimated cost to the Federal government? In practical terms, would the requirement reduce the listing program? (A similar question can be raised if one restricts the question to designated critical habitat.)

VIII. Miscellaneous

What has been the effect of ESA on agricultural use of pesticides? What was the economic impact of the effect, and where has it been most prominent?

What has been the effect on other agricultural activities? What was the economic impact of the effect, and where has it been most prominent?

If the standards for obtaining an exemption were modified, what existing standards should be dropped or changed? What new standards should be added?

Does an exemption for a project deserve the high-level Executive consideration that the ESA now gives it? If not, what substitute is most appropriate?

U.S. TO SPEED UP SAVING OF SPECIES

Settlement Requires Adding 400 to Endangered List

By KEITH SCHNEIDER

Special to The New York Times

WASHINGTON, Dec. 15 — The Bush Administration, which made opposition to the Endangered Species Act a centerpiece of the 1992 campaign, today settled a lawsuit with environmentalists that requires the Government to protect 400 more species of plants and animals over the next four years, increasing by 53 percent the number of species under Federal safeguards.

Interior Secretary Manuel Lujan Jr. approved the settlement after more than six months of negotiation between the Government and a coalition of national and regional wildlife groups. Both the Government and the environmental groups agreed that the settlement was the one of the single most important steps the Government has taken to save plants and animals threatened with extinction since the Endangered Species Act was enacted in 1973.

Denial of Contradiction

Almost 90 percent of the species due to be protected are plants, and most are native to Hawaii, California, the Pacific Northwest and the desert Southwest, according to the United States Fish and Wildlife Service, a unit of the Department of the Interior. Only a handful of the threatened species, like the Lake Erie water snake, are in the East.

Administration officials took pains today to say that the settlement was not a contradiction in policy. Although President Bush lashed out at the Endangered Species Act during the cam-

U.S. Settles Suit to Save More Threatened Species

Continued From Page A1

paign, calling it a "sword aimed at the jobs, families and communities of entire regions," the officials said they were also obligated to obey the law.

"The President and the Secretary believe the Endangered Species Act should be changed," said Steven Goldstein, the chief spokesman for the Department of the Interior. "But at the same time, the President told the Secretary of the Interior to make sure he enforces the law. That is exactly what we are doing. Now the environmental critics on the outside are going to find out what it's like to be on the inside and it isn't as simple as it might first appear."

The environmental groups, among them Defenders of Wildlife and Friends of Animals, praised Mr. Lujan's decision, calling it a "desperately needed and long-overdue commitment by the Government to take more seriously its obligation to protect our nation's dwindling biodiversity."

The settlement will accelerate the rate at which plants and animals are identified for Government protection, and at the same time raise the stakes in a national battle over the Endangered Species Act, the toughest conservation law in the world.

Proponents said the settlement would give them even more reason to support the law's clear prohibitions on destroying areas of the environment that are needed to preserve threatened or endangered species. But property owners, timber workers, miners and rural residents around the country who joined Mr. Bush in criticizing the act for favoring the rights of plants and animals over people said they would now have even greater incentive to try to amend the law in Congress.

"I would hope this decision helps build a fire under all of us and really make people stand up and fight for protection of their rights," said Dixie M. Reisch, a member of the Molalla Timber Action Committee, a property rights group in Molalla, Ore. "The Endangered Species Act is a good way to bankrupt the country."

Timing of Settlement

The agreement was reached five weeks before the end of the Bush Administration, and several leaders of property-rights groups were curious about its timing. Though opponents and supporters of the Endangered Species Act noted that today's action could have the effect of fueling opposition to the law, the White House denied that the settlement had political overtones.

"The Administration has always been committed to endangered-species protection," said Judy Smith, a White

House spokeswoman. "The President has always said the act should strike a balance which takes into account the impact on jobs, families and communities."

Eric R. Glitzenstein, a Washington lawyer who represented the environmental groups, said the suit was filed in April in response to an Administration effort last winter that temporarily halted the process of designating new species for protection.

Mr. Glitzenstein also said the Administration was under no immediate pressure to reach a settlement. "They could have conceivably strung it out for years," he said.

But, he added, "once the election came and went, the Endangered Species Act no longer was needed as a political tool to fight the Democrats. Once it lost its value, the political resistance to a settlement evaporated."

Mr. Goldstein, the Interior Department spokesman, said the settlement left the incoming Clinton Administration with an enormous management challenge. "One thing is clear," he said. "The Clinton Administration now will have to address the full force and effect of the Endangered Species Act. It will be interesting to see if the environmentalists are still their best friends in four years."

The Fish and Wildlife Service said

One of the most important steps in saving wildlife in 19 years.

that by 1997 the settlement would increase the number of endangered plants and animals afforded Federal protection to roughly 1,150 from 749 today. To reach that number, the Government will have to designate roughly 100 species a year for protection starting in the current fiscal year; that is double the rate at which it identified and provided safeguards for threatened species over the last 19 years.

The settlement also requires the Government to study 900 more species by Sept. 30, 1993, to determine which are threatened enough to warrant Federal protection.

The three-step process for determining which species to protect is technically complex, and only twice before, in 1976 and the past fiscal year, has the Government designated as many species for protection as the settlement requires. The wildlife service said it had already identified roughly 100 more species deserving of protection.

but had not yet officially designated them as endangered or threatened.

Under the law, it is illegal to kill any animal designated as threatened or endangered even if it lives on private property. The protections are less strict for listed plants, which can in some cases be killed if they are on private property.

The settlement does not change the restrictions but could mean that the wildlife service will have to alter more of its thinking about how to save endangered species. Ten years ago, the agency began to protect groups of plants and animals that inhabited an ecological region instead of protecting one species at a time. That is likely to become much more common as a result of the settlement, wildlife service officials said today.

The great forests of the Pacific Northwest, for instance, would be studied for protection not only to save the threatened northern spotted owl, but also to preserve flowers, ferns, and grasses that are among the 400 species to be protected by 1997.

"Our way of looking at the settlement is that we should be doing at least this much to protect species," said John Fay, a branch chief in the wildlife service. "We have a huge pool of species waiting to be evaluated, and we want to reduce it."

all candidate species
category I - have been delisted
to be endangered & discussed
later but delay.

Dependent & need for Genes
→ low risk

→ settlement w/ previous
over 4 yrs. all cat I
species listed.

all others will auto. listed
4 of 3700 ~~candidate~~ candidates
→ prioritize 900 of these
of 400-500 mostly plants
some said to be listed by '78

DECEMBER 14-15, 1992 LITTLE ROCK, ARKANSAS

CONFERENCE
ECONOMIC
THE
by Southern
Mich. Fla. Blackburn

PHOTOCOPY
PRESERVATION

An excellent
look at an area
with political and
economic significance