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File - Spotted Owl

CRITIQUE OF PROPOSED RULE

CRITICAL HABITAT FOR THE NORTHERN SPOTTED OWL

I. Biological Aspects

The following comments on the biological basis for the need for critical habitat, and the process used to select areas for critical habitat are by necessity brief. This is dictated by the virtual lack of any substance in the proposed rule. The proposed rule is at best an incomplete regurgitation of the Interagency Scientific Committee's (ISC) Conservation Strategy (Thomas Committee Report) and the Fish and Wildlife Service's own 1990 Status Review.

Best Scientific Data Not Used

The Endangered Species Act directs the Service to base critical habitat upon the best scientific data available. Unfortunately, although the Service recognized this requirement in its proposal (page 19), it failed to include any of the new data available on spotted owl numbers or habitat use. The most recent information noted by the Service is the 1990 Status Review and the 1990 ISC Conservation Strategy. Both of these documents are based on data obtained in 1989 or earlier. Thus, both are flawed as a present-day management strategy. Recent survey data, readily available, show not only increased numbers of owls, but owls using a greater variety of habitats than previously considered suitable. These data include successfully breeding pairs in young, managed stands, in numbers far beyond what could be considered aberrant "outliers."

For example:

- ▶ Recent surveys in Washington wilderness areas have shown a higher reproductive rate in northern spotted owls (1.7 chicks/pair) than anywhere else previously recorded for Washington. Yet, the ISC Conservation Strategy, the 1990 Status Review, and now the Critical Habitat proposal all discount the value of wilderness and parks.
- ▶ Recent surveys have found 30 mating pairs of owls on managed land in northwest Oregon, in 40- to 80-year old timber with less than 10% old growth (and as much as 10% clearcuts). This is habitat that was previously considered good for nothing more than travel cover from one place to the next.

- ▶ One private landowner this year (1 month into the owl survey season) has already found 15 new breeding pairs on his land (40- to 60-yr old managed forest).
- ▶ We now know that there are over 500 pairs of owls in California, over 400 pairs in Oregon, and over 300 pairs in Washington that affect private land management (owls are located on, or their regulatory management circles overlap onto private land).

During the past year, the 1990 Status Review and ISC Conservation Strategy have received considerable review. Through these reviews, significant gaps and weaknesses in the original data and conclusions have been brought to light. For example, there are major statistical problems with the habitat relationships data (based on individual owls rather than owl populations, nest and roost habitat data biased in favor of habitats selected by researchers, home range techniques used dictate home range size, habitat use vs habitat requirement) such that the only valid conclusion to the data presented in the 1990 Status Review is that northern spotted owls use old-growth forests as well as other forest types such as mature, young, mixed age, and riparian forests.

However, the Service has failed to even mention, much less address, the biological concerns raised by the scientific community. Rather, the Service has accepted, in total, the original incomplete data and have applied them here without biological or scientific temperance, but instead with further wholesale extrapolation.

Given the extreme political, economic, and biological significance of this proposal, the Service should have acquired and incorporated all of the most recent information on spotted owls in the Pacific Northwest. It is professionally irresponsible for the Service to have taken the very cavalier posture of summarizing only old data and having blatantly placed the responsibility for compiling and analyzing all new information on the public. Such a failure to incorporate the most recent information would not be acceptable in any peer-reviewed professional publication, and should not be acceptable here.

Continued Reliance on Old-growth Improper

As it did in the listing regulation, the Service recognizes the biological fact that "... the age of a forest is not as important a factor in determining habitat suitability as are vegetational and structural elements." (page 8). Yet, in its designation of critical habitat, the Service once again automatically defines as "marginal" any habitat less than 100 years of age (page 21). Past data, and certainly more recent data, clearly demonstrate that spotted owls are living and breeding successfully in younger (40 - 80 years old) stands, and these data are not limited to the redwoods of northern California.

A Scientific Assumption Now Deemed to be Fact

In the ISC Conservation Strategy, Thomas et al. made the assumption that large blocks of habitat are superior to small blocks of habitat (page 23 of the ISC Strategy). Data have not been compiled to prove this requirement for the northern spotted owl. In fact, new research data indicate that owls can live in relatively small patches of forest habitat with the required structural characteristics, even when that small patch is surrounded by a "sea" of young, intensively managed forest. Ignoring these new data and instead using an assumption as if it were fact, the Service improperly has based its critical habitat designation on the idea that "Large tracts of land containing significant acreage of forest with these structural components are generally required to satisfy the biological needs of spotted owls." (page 21).

Then, in apparent contradiction to its own evaluation that "... small, isolated, and highly fragmented stands are less valuable and may not necessarily be essential..." the Service proceeds to propose "small, isolated, or fragmented stands ... as critical habitat..." (page 23).

No Basis for Corridors/"Linkage" Habitat

"The Service proposes to designate critical habitat within those areas of concern because preserving these habitat linkages is essential to the conservation of the owl." (page 27). Where are the data to support this? The ISC Conservation Strategy discounts the value of travel corridors because owls disperse randomly. Also, the ISC Conservation Strategy notes that most spotted owls can successfully disperse from one refugia to another if they are within 12 miles of each other.

The Service also tries to minimize the impact of this additional designation by saying "... in an area of concern, where linkage habitat is important, the Service may not consider a proposed harvest to constitute adverse modification if the surrounding forest matrix would still permit movement opportunities for owls." But, in the very next sentence the Service asserts "However, a proposed action that would result in further fragmentation or loss of nesting habitat might be considered adverse modification..." Which is it? Will all critical habitat units, including these "linkage" habitats, be held to the highest standard of habitat requirements (i.e., nesting habitat); or will some be recognized as foraging habitat or travel corridors? The differences are considerable.

Basis for Defining Adverse Activity Is Extreme

In detailing what might constitute an adverse activity, the Service notes "These activities may include actions that would reduce the canopy closure..., reduce the average tree diameter..., reduce the availability of nest structures..." etc. Does the mere reduction of these habitat features constitute adverse impact? If an area has twice the number of nest

structures required, a reduction of 25% would still leave a margin of 25% excess in nest structures. The Service should specify minimum habitat standards, for each critical habitat element; and these should have been specified in the proposed rule so they could receive public scrutiny and comment.

Insult added to Injury

The obvious ploy to minimize the impact of this proposal by implying its 11.6 million acres under direct control and management restrictions is less than the ISC Conservation Strategy's 7.7 million acres is an insult to the intelligence of the public. While it is true the ISC Conservation Strategy provided specific habitat recommendations for areas outside its HCA's, this proposal is silent on lands outside the designated units, and does not remove responsibility for owls and owl habitat outside the areas designated as critical habitat. The owl is still a listed species, and land managers (public and private) will still be responsible for habitat modification and the associated liability of take wherever owls occur. Moreover, under the requirements of the Endangered Species Act and the National Forest Management Act, both plans will be implemented simultaneously.

II. Economic Aspects

In presenting its economic analysis, the Fish and Wildlife Service has considered only the incremental impacts of the critical habitat designation. However, it makes no analytical sense to consider the designation of critical habitat separate, and apart, from the broader impacts that the listing in conjunction with critical habitat designation implies. A more appropriate analysis would examine the confounding effects of the ISC Conservation Strategy impacts and the designation of critical habitat on both public and private lands.

Moreover, the Service selectively used Agriculture and Interior Department (USDA/DOI) assumptions and methods from an earlier analysis of the economic impacts of implementing the ISC Conservation Strategy to meet a clear objective of this new assessment (i.e., to minimize the incremental impact of the critical habitat designation.) In fact, the Service raised its expectations of the costs associated with the ISC Strategy in order to minimize the incremental impact of the critical habitat designation. In conducting the economic analysis, the Service has also:

- ▶ failed to accurately, or even reasonably, portray the economic cost in terms of timber values forgone, economic harm to local governments, loss of jobs and higher government outlays that will occur as a result of the critical habitat designation;
- ▶ failed to provide even a minimally acceptable measure of the economic and/or other benefits associated with designation of critical habitat;

- ▶ failed to even minimally analyze the potential economic benefits associated with not designating critical habitat in the areas identified;
- ▶ incorrectly ignored the impact on private lands;
- ▶ used the same inadequate multipliers for employment losses as were included in the USDA/DOI assessment of the ISC Conservation Strategy; and,
- ▶ presumed incorrectly that designation of critical habitat would increase non-consumptive forest uses including recreation.

Baseline Assumptions are Flawed

The Service revised upward the impact of the ISC Conservation Strategy on federal harvests and, in doing so, significantly minimized the incremental impact of designating critical habitat. The Service concludes that the earlier USDA/DOI economic assessment was in error by not calculating any impact from the 50-11-40 rule for managing federal lands outside of HCA's. Therefore, the Service adjusted upward by 50% the timber volume impacted by the ISC Conservation Strategy. By increasing the estimated impacts of the ISC Conservation Strategy, the Service could minimize the incremental impacts of the critical habitat designation.

The Service also relied on the USDA/DOI rising price assumption. This permits stumpage values to rise in response to reduced federal timber sales, thus offsetting some of the federal revenue loss and stimulating an increase in private harvests.

This is conjectural and highly unlikely given the requirements of the critical habitat proposal itself. First, the listing along with the critical habitat designation means that federal timber sales in the owl region will be virtually eliminated. There is no opportunity for increased revenues under such a scenario. Second, restrictions required of private landowners by state regulations assures a reduction in private harvests. Price responsive behavior is irrelevant where constraints on the free market are imposed.

The Service uses the projected "Final Plans Plus ISC" scenario as the baseline for purposes of analyzing the incremental costs of critical habitat. This was modified as earlier discussed to increase the presumed impacts of this baseline. However, final plans are not being implemented because of appeals and litigation. The use of the "Final Plans Plus ISC" only serves to minimize the reported critical habitat impacts. A more appropriate baseline is the recent past.

The Timing of Impacts is Incorrect

For its economic analysis, the Service delays any impacts until 1995. The rationale used is that a combination of the price responsiveness of private harvests and the volume of timber under contract will carry the region's producers until that time. However, the impacts of the agency's decision are immediate.

The fallacy of the price responsiveness has already been discussed. The most current estimate of public timber under contract in Oregon and Washington is approximately 6.6 billion board feet, or a 16-month supply under normal operating conditions. The supply is likely shorter in the owl sub-region as those purchases have already been impacted by a reduced sale program. In any event, this sets an outside parameter of 16 months for most mills to remain in actual operation.

However, that is an optimistic view. First, without a definite future timber supply, no lender will provide the financing necessary to acquire timber and to manufacture the raw material into finished product to be sold in the market. Lack of financing will likely render the volume under contract inoperable long before 1995.

Second, and more important, the volume under contract must be analyzed against the critical habitat proposal. If harvesting will adversely modify proposed habitat, the Forest Service or BLM will modify the contract. Two lawsuits are already pending to enforce this requirement and others are likely. Therefore, the full impacts of the designated habitat decision will likely be felt in 1991, not 1995.

Flawed Extrapolations of Existing Information

The Service has also erroneously assumed that the acres added to the ISC Habitat Conservation Areas (HCA's) in the designation of critical habitat comprised similar stand volumes and values. Yet, the Service also notes that it expanded on the HCA's to incorporate more contiguous and large blocks of older forests. Therefore, it seems possible, if not likely, that the new critical habitat areas contain timber values that, on average, exceed those contained only in the HCA's which in addition to older stands also comprised some younger and less mature stands.

Log Export Restrictions Overestimated

The Service's analysis misrepresents the economic significance of new legislation regarding log exports. Since this legislation affects an inconsequential amount of timber harvested from public lands, the impact on employment will be minimal. Furthermore, the Service fails to consider the full impact of a restriction on log exports. Consequently, reducing log exports may not have a positive employment effect.

Value of Non-consumptive Forest Uses Overestimated

Without any substantiating evidence, the Service implies that non-consumptive use will increase if logging is reduced and thereby mitigate job losses in the forestry sector. This is economic hocus-pocus. First of all, recreation and tourism would likely suffer as access to the back country is restricted. For certain, the preserved old-growth will not attract much more use because "Nature tour leaders, hunting guides, photographers, fishing guides, and so forth" currently have far more forest land than they can utilize. Without timber receipts to maintain roads and trails, potential RV and other motorized users will suffer. Secondly, the notion that a service job will compensate for a job lost in the forest industry is fallacious. The former is seasonal and low-paying, whereas the higher paying job provides year-around support to dependent communities.

Volume and Job Impacts are Grossly Underestimated

Aside from ignoring impacts on private lands, the Service relies on the employment multipliers used in the earlier USDA/DOI economic analysis. However, an independent study conducted by Doug Olson at the University of Minnesota, assumed an employment multiplier of 19.5 jobs per million board feet whereas the USDA/DOI assumed 10.6 jobs.¹

Under the critical habitat designation, the Service concludes that 1.2 billion board feet of timber will be offered from federal lands. This would be a reduction from the 5.6 billion board feet average of the recent past, or a 78 percent drop off. Assuming the same level of impact on other public and private lands that was calculated for the ISC strategy, the total volume loss would exceed 9 billion board feet.² A partial estimate of the total impact of the critical habitat designation on both public and private lands would almost certainly exceed 131,000 direct and indirect jobs, using the correct multiplier.

This assumes, of course, that there will be some timber sale program remaining. This is problematic on at least three fronts. First, it supposes that the Service can find sufficient volume that can be offered for sale without impinging on designated habitat. Secondly, with such a drastic reduction in the timber sale program, the remaining volume may result in a timber sale program that is uneconomic to administer and therefore might be

¹ The differences in the estimate can be explained by the consideration of: federal administrative and timber management employment; jobs supported by in-lieu of tax payments; jobs supported by interregional trade flows; appraised instead of higher bid prices for stumpage; employment associated with processing of residues; and job impacts in California which were ignored.

² A study conducted last year, by Dr. John Beuter and a team of economists and sociologists, calculated a 30% and 51% reduction in other public and private harvests respectively from the implementation of the ISC report. In all likelihood those estimates would be conservative in light of the critical habitat designation.

curtailed further. Third, it ignores the likelihood that any remaining sales will be encumbered by legal challenges.

III. Legal Aspects

Critical habitat must be designated under criteria established by Congress in the Endangered Species Act (ESA). The method for designation is the rulemaking process established by the Administrative Procedure Act (APA) and modified somewhat by the ESA. 16 U.S.C. § 1533(b)(4)-(6). The legal requirements for designation are thus both substantive and procedural. The Fish and Wildlife Service proposal fails to satisfy either category of requirements.

The Fish and Wildlife Service must designate critical habitat "on the basis of the best scientific evidence available" and "taking into consideration the economic impact, and other relevant impact, of specifying any particular area." 16 U.S.C. § 1533(b)(A)(2). The ESA also requires the Service to include a summary of data on which a proposal is based in every proposed rulemaking for critical habitat designation. Presumably, if no summary is included than the Service has not considered the data.

The federal courts have long recognized that a rulemaking proposal under the APA must identify all significant subjects and issues and must afford the interested parties a reasonable opportunity to participate. The courts have further refined these principles by explaining that a proposed rulemaking must provide sufficient factual detail and rationale for interested parties to comment meaningfully.

The failure of Service to use the "best scientific evidence available," as explained above, renders meaningless the opportunity for public comment. Moreover, the scientific data collected and analyzed in the last two years raises "significant issues" with respect to the validity of the ISC Conservation Strategy and its assumptions which are neither identified nor discussed.

The proposed rulemaking fails to take into "consideration" any economic impacts and fails to recognize any economic analysis other than the one conducted by the Forest Service and the Bureau of Land Management after release of the ISC Conservation Strategy. In fact, the Fish and Wildlife Service does not even clearly state that the "revised proposed" designation will take these impacts into consideration. As described above, the scope of the impact analysis is unlawfully circumscribed and provides no basis for meaningful public comment.

The Service is acting in an arbitrary and capricious manner by attempting to separate the impacts of designation as incremental over the impacts of listing and the impacts of the ISC Conservation Strategy. The ESA provides no legal basis for this approach; the impacts

of all three are inseparable and must be considered together in order to give any reasonable reading to the ESA.

The proposed rulemaking states that designation "will not constitute a major rule under Executive Order 12291 [significant economic effects] and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act." In the very next sentence, the Service acknowledges that "it is not clear whether significant economic impacts will result from critical habitat designation." The Service does not offer for public review the analyses that allow it on the one hand to conclude that it does not have to conduct the required impact analyses for proposed rules with significant economic effects and on the other to state that lack of significant impacts are not clear.

IV. Conclusion

The only conclusion to be drawn is simply that the Fish and Wildlife Service failed to take advantage of an opportunity to bring both sanity and humanity to the Northern Spotted Owl debate. The Service produced two documents which are devoid of any original thinking and which ignore most data developed in the last two years. The Service violated its statutory mandate to rely on the "best scientific data" available and instead regurgitated recycled data and outdated assumptions. The Service, in what can at best be called bureaucratic buck passing, interpreted its responsibility for economic analysis in the narrowest possible way, rendering both its draft and any final product virtually useless. The Service took every opportunity to minimize or ignore adverse impacts from the data it did use. For example, the critical habitat of 11.6 million acres is somehow less than the Thomas Report's 7.7 million; no economic impacts will occur until 1995; no impacts will ever occur on private land; and loggers can easily become tour guides, although there will be no money to maintain the roads and trails. Finally, the Service expects the public to provide comment on this vague, misleading and misguided proposal in direct violation of the statutory requirement to provide an opportunity for meaningful public review and comment.

Prepared by American Forest Resources Alliance
April 29, 1991



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Michael Byrne
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STATEMENT IN OPPOSITION TO THE ENDANGERED SPECIES ACT

The Endangered Species Act contains one very simple and fundamental proposition. That proposition is simply that no agency of the federal government ought to be responsible for jeopardizing the continued existence of any endangered species. This is the essence of the Act's Section 7.

The way in which Section 7 works is important to understand in order to appreciate why the amendment before us is both unnecessary and undesirable. Each time a federal agency plans any action that may affect an endangered species, that agency and the U.S. Fish and Wildlife Service formally consult about the likely impacts of the proposed action. The purpose of that consultation process is not simply to determine the effects of the proposed action, but also to explore alternatives or modifications to the proposed action that would avoid what Section 7 seeks to prohibit -- jeopardizing the survival of an endangered species. Remarkably, the process has worked extraordinarily well. For virtually every one of the thousands of federal actions that have gone through the consultation process of Section 7, the final result has been either a finding of no jeopardy, or a determination that reasonable and prudent alternative exist that avoid causing jeopardy. This has even been true in the case of timber harvesting on Forest Service lands with spotted owls. Since the spotted owl was listed as a threatened species, the Fish and Wildlife Service and the Forest Service have consulted on some 700 timber sales; not one has been halted as a result of the owl's listing. Nor has any timber sale on lands of the Bureau of Land Management been halted by virtue of the spotted owl's listing.

The other important thing to understand about Section 7 is that the Endangered Species Act does not dictate how the federal actions that are the subject of its consultation process should be defined. The Act gives the flexibility to the Fish and Wildlife Service and the Forest Service (or the Bureau of Land Management) to determine the scope of their consultations. If they wish to consult about a single timber sale in a single forest, they may do so; if they want to consult about hundreds of timber sales in many different forests, they may also do so. They have the flexibility to define the scope of the federal actions that they consult about as they see fit. They have chosen, properly, to consult about actions broad enough to package together many related activities, but not so broad that it is impossible to provide a meaningful evaluation of their impact on endangered species.



The amendment before us virtually preordains the sort of conflict that the Endangered Species Act has so often succeeded in avoiding. It does so by foreshortening the Section 7 consultation process and requiring that the subject of that consultation process be everything even remotely related to timber management in seventeen different National Forests and eight different BLM districts, based on plans that are outdated, imprecise, and no longer reflective of the policies and programs of the agencies that promulgated them. The only possible outcome of this wholly artificial consultation process -- as the sponsor of this amendment well knows -- will be a finding that the Forest Service and the BLM cannot ensure that no jeopardy will result to the spotted owl. As a result of that finding, the Endangered Species Committee (or the "God Committee", as it is popularly known) will be asked to consider an exemption from the Endangered Species Act, something they have done only twice before in the last twelve years.

There is nothing in the law today that prevents the Forest Service and the BLM from asking the Fish and Wildlife Service to consult about the same comprehensive action that this amendment seeks to exempt. What prevents them from doing so is not the law, but rather the fact that they know the outdated forest and land management plans are simply too imprecise to allow for a meaningful evaluation of their impact on the spotted owl. Those plans set timber harvest targets, but they fail to specify precisely where the timber harvests are to occur; without that information, how can their impact on the owl be assessed? Furthermore, these plans do not reflect important changes in agency policy since their promulgation. They do not, for example, reflect any of the recommendations of the so-called Jack Ward Thomas Study, which we in Congress directed to be prepared to guide forest management in the Northwest. They do not even reflect important policy decisions made by these agencies years earlier. The BLM plans, for example, do not reflect commitments made by that agency to the Oregon Department of Wildlife in 1983 and 1987 concerning the protection of areas around owl nesting sites. In short, this amendment strips these agencies of the discretion they now have under this law to put forward their own proposals for consultation and forces them instead to put forward a proposal that we in Congress would design.

The situation today is not at all analogous to that of the snail darter and the Tellico Dam some twelve years ago. As a result of that conflict, Congress amended the Act to allow for the exemption of certain federal actions that met strict criteria. That exemption process was intended to be a matter of last resort. Congress did not legislate with respect to Tellico Dam until all the other processes of the Act and the courts had been exhausted. Tellico Dam had been fully through the Section 7 consultation process and it had been fully through the courts --

even the United States Supreme Court. The result was an injunction from which no further appeal was available. The situation before us today is diametrically the opposite. The Act's consultation process has not yet resulted in a finding of jeopardy with respect to even one timber sale. No injunction from even the lowest of the federal courts is based on any violation of the Endangered Species Act. Congress is being asked to step in and make the exemption process a matter of first resort. Such an amendment is unprecedented and unnecessary. I urge that it be defeated.

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The sponsor of this legislation would have you believe that it seeks nothing different from what Congress did in the case of the Tellico Dam over a decade ago.

Nothing could be further from the truth. This legislation is far more damaging to the Endangered Species Act than anything that Congress has done earlier.

In 1978, Congress did direct the immediate convening of the God Committee to consider an exemption for Tellico Dam.

However, before this legislation was passed, consultation had been concluded on the Tellico Dam, the project had been found to jeopardize the snail darter's continued existence, and there were no reasonable and prudent alternatives.

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By contrast, the forest plans that would be forced to be considered for an exemption under this amendment have never been subject to consultation. Not one of more than 1,300 timber sales considered since listing of the spotted owl has been found to violate the Endangered Species Act.

Congress convened the God Committee for Tellico Dam because it already had been determined that there was no way for the project to go forward without making it likely that the snail darter would become extinct.

No similar irresolvable conflict has been shown to exist for the owl. No effort has even been made to see if there are ways to avoid such a conflict.

Maybe there are no ways, but let's invest a little time in at least trying to find them before we rule out the chance.

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For Senator Gore:

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Mr. President, I rise to speak against the Packwood Owl Extinction Bill, which, if enacted, would undermine one of this Nation's most significant environmental laws, the Endangered Species Act.

When Congress enacted the Endangered Species Act in 1973, we set a noble goal for this nation: to halt the accelerating rate of species extinction worldwide and to pass on to future generations a world rich in plants and wildlife. The Endangered Species Act represents an essential step in our national commitment to protect biodiversity both here and abroad. We must not retreat on that commitment.

There are a few who say the Endangered Species Act is too tough and is blocking economic development. Nothing could be farther from the truth. Of more than 48,000 projects reviewed by the U.S. Fish and Wildlife Service between 1979 and 1986, less than one percent were found to jeopardize the continued existence of threatened or endangered species. And in those rare instances where an irreconcilable conflict between development and endangered species conservation arises, the Endangered Species Act provides a way to resolve those conflicts, through convening of the Endangered Species Committee, the so-called "God Committee."

It is instructive to note that, in the twelve years of its

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existence, the Endangered Species Committee has only had to resolve two such conflicts, the Tellico Dam case in Tennessee and the Grayrocks Dam case in Wyoming. In the Tellico Dam case, the Committee declined to exempt the project from the Endangered Species Act, leaving the ultimate decision to complete the project to Congress. And in the Grayrocks Dam case, the Committee granted an exemption to the project.

The Packwood Owl Extinction Bill ignores these facts and seeks to convene the Endangered Species Committee within 90 days to consider exempting logging of ancient forests on federal lands in the Pacific Northwest from the requirements of the Endangered Species Act. This course of action is both ill-conceived and unjustified. Convening the Endangered Species Committee now is premature, since an irreconcilable conflict has not been shown to exist. Not a single timber sale has been halted in the Northwest under the Endangered Species Act since the northern spotted owl was listed as a threatened species. Thus, the Packwood Owl Extinction Bill seeks to fix an Endangered Species Act that is not broken.

More importantly, the Packwood Owl Extinction Bill would surely lead to continued destruction of a national treasure, the last remaining 10 percent of the ancient forests of the Pacific Northwest. If we are to have any success in persuading our friends in other regions of the world to preserve their rain forests and their biodiversity, we must set the example in this

country. The Packwood Owl Extinction Bill sends exactly the wrong message to our neighbors around the globe. Accordingly, I urge my colleagues to join me in opposing this bill.

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Mr. President, I am strongly opposed to this amendment to the Endangered Species Act. It is ill-conceived and absolutely unnecessary.

The amendment would direct the immediate convening of the Endangered Species Committee, otherwise known as the "God Committee" for the purpose of considering an exemption from the Endangered Species Act for the annual timber sales programs of seventeen different national forests and six BLM districts in the Pacific Northwest. These timber sales programs are based upon land management plans that, in most cases, were prepared years ago, well before the spotted owl was listed as a threatened species. Last year Congress directed that a special scientific study be done to assess the needs of the spotted owl under the National Forest Management Act. That study, the "Thomas Report", was completed earlier this year. It is the most thorough and rigorous scientific examination of this issue. In response to it, both the Forest Service and the BLM have announced plans to modify their timber harvest practices. Yet, it is not those new plans, formulated in response to the study Congress mandated, that are required to be considered for an exemption. Rather, it is the old plans, formulated without benefit of the Thomas Report, that this amendment seeks to exempt.

The amendment also leapfrogs unwisely over the consultation process that is designed to assess the impacts of federal actions on endangered species and to explore possible, less-damaging alternatives to those actions. When Congress directed that Tellico Dam be considered for an exemption twelve years ago, it did so after the consultation process had been concluded and resulted in an unequivocal finding that the dam would jeopardize the endangered species. Here, there has been no consultation process resulting in a jeopardy finding. To the contrary, every timber sale that has been reviewed by the Fish and Wildlife Service since the owl's listing (700 sales in all) has concluded that no jeopardy would result.

For all of these reasons, the amendment is misguided and should be rejected.

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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
WASHINGTON, DC 20510-6175

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October 5, 1990

Dear Colleague:

Earlier this week, you received a letter from Senator Packwood setting forth his intention to offer an amendment to convene the "Endangered Species Committee" to consider exempting the northern spotted owl from the protection of the Endangered Species Act. We believe that such an amendment is poor policy and should be defeated.

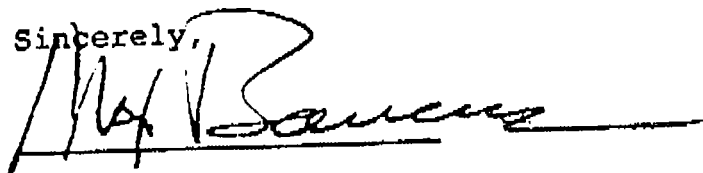
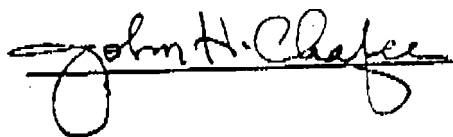
The Endangered Species Act, one of our most important environmental laws, is designed to prevent the Federal government from taking actions that result in the extinction of a species. The heart of the Act is the requirement that Federal agencies consult with the U.S. Fish and Wildlife Service on actions that might jeopardize the continued existence of a species. This 90-day process is designed to develop reasonable, economically feasible alternatives that allow activities to go forward without contributing to the extinction of a threatened or endangered species.

It is important to note that since listing the northern spotted owl as a threatened species in June, 1990, the U.S. Fish and Wildlife Service has consulted on over 1,300 timber sales on lands administered by the Forest Service and the Bureau of Land Management. Not one sale has been halted by the Service for failure to meet the requirements of the Endangered Species Act.

We share Senator Packwood's concern regarding the potential economic impacts of protecting sufficient old growth forests to allow for the continued survival of the northern spotted owl. However, we believe that the Endangered Species Act contains mechanisms to balance economic concerns with the protection of endangered species and that the Act should be allowed to work. To short circuit all of these carefully crafted provisions is simply unwarranted.

We hope you will not make a commitment to support Senator Packwood's amendment until the Senate has had the opportunity to consider and debate his proposal. The Endangered Species Act has worked well because Federal agencies have sought solutions within the Act, not exemptions from the Act. We fear that this amendment will seriously damage the integrity and the effectiveness of the Endangered Species Act.

Sincerely,



PHOTOCOPY PRESERVATION

SEVEN FACTS ABOUT THE PACKWOOD ENDANGERED SPECIES AMENDMENT

The background statement accompanying Senator Packwood's October 3 "Dear Colleague" letter makes at least seven erroneous or seriously misleading claims about the effect of the amendment he plans to offer. Those claims, and the actual facts, are as follows:

- CLAIM: Senator Packwood says his amendment "addresses preliminary procedures only."
- FACT: The Packwood amendment eliminates the consultation procedure by which the effects of a proposed federal action and alternatives to it are examined. This consultation procedure is the key mechanism by which the Endangered Species Act functions to find reasonable alternatives to development proposals to meet species conservation needs.
- CLAIM: Senator Packwood says that consultation "requirements have been met in the spotted owl case."
- FACT: The Packwood amendment addresses timber sale programs that have not been the subject of consultation. About 700 individual timber sales have been the subject of consultation since the owl was listed, and all have been approved.
- CLAIM: Senator Packwood claims that the exemption provisions of the Endangered Species Act envisioned an administrative process involving only one action at one time in one place, rather than a series of related actions in a broader area.
- FACT: The Act does not limit the "federal actions" that are the subject of consultation or exemption procedures in the way Senator Packwood asserts. Rather, the Act has the flexibility to allow consultation (and consideration of an exemption) for narrow or broad federal actions, including an entire annual timber sale program for Forest Service lands in a particular region.
- CLAIM: Senator Packwood says that his amendment does no more than Congress previously did in directing the consideration of Tellico Dam and Grayrocks Dam for exemptions.
- FACT: Senator Packwood omits mention of one vitally important fact. Both the Tellico Dam and Grayrocks Dam had been found in court to violate the Endangered Species Act after consultation had concluded the same. By contrast, the timber sale programs that Senator Packwood would force to be considered for an exemption have never

been subject to consultation. Moreover, not one timber sale has yet been halted as a result of the application of the Endangered Species Act.

- CLAIM: Senator Packwood says his amendment merely "defines the federal action" that the Endangered Species Committee is to consider for an exemption.
- FACT: The action that Senator Packwood's amendment defines is a set of timber sale programs developed years before the spotted owl was listed and years before the writing of the congressionally mandated "Thomas Report" from the Interagency Scientific Committee on the Spotted Owl." The Forest Service, as recently as September 28, has embraced the recommendations of the Thomas Report, and the BLM has also agreed to key provisions of those recommendations, yet none of these agency policies is to be part of the federal action that the Packwood amendment would require to be considered for an exemption.
- CLAIM: Senator Packwood says his amendment "would not alter a single procedure once the Endangered Species Committee is convened."
- FACT: The Packwood amendment would limit the number of environmental intervenors who can participated in the proceedings before the Committee and would allow Interior Secretary Lujan to determine who can represent environmental interests in those proceedings. Under existing law, an administrative law judge, not Secretary Lujan, decides who may intervene and there is no predetermined limit on environmental intervenors.
- CLAIM: Senator Packwood says his amendment "would not amend the Endangered Species Act or alter one word of its text."
- FACT: Senator Packwood's amendment trashes the procedures that Congress carefully crafted in 1978 to ensure that the Endangered Species Committee would be convened only in cases of irreconcilable conflict. By short circuiting this process the Packwood amendment creates a crisis that simply does not exist, as evidenced by the 700 timber sales that have been approved since the spotted owl's listing.

PHOTOCOPY
PRESERVATION

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ROBERT F. HURLEY, MINORITY STAFF DIRECTOR

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

October 5, 1990

Dear Colleague:

Earlier this week, you received a letter from Senator Packwood setting forth his intention to offer an amendment to convene the "Endangered Species Committee" to consider exempting the northern spotted owl from the protection of the Endangered Species Act. We believe that such an amendment is poor policy and should be defeated.

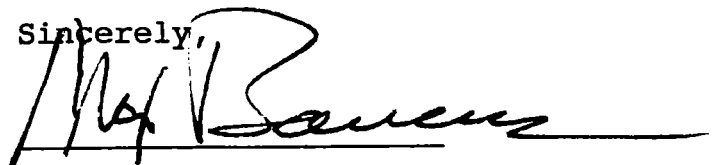
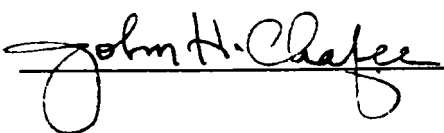
The Endangered Species Act, one of our most important environmental laws, is designed to prevent the Federal government from taking actions that result in the extinction of a species. The heart of the Act is the requirement that Federal agencies consult with the U.S. Fish and Wildlife Service on actions that might jeopardize the continued existence of a species. This 90-day process is designed to develop reasonable, economically feasible alternatives that allow activities to go forward without contributing to the extinction of a threatened or endangered species.

It is important to note that since listing the northern spotted owl as a threatened species in June, 1990, the U.S. Fish and Wildlife Service has consulted on over 1,300 timber sales on lands administered by the Forest Service and the Bureau of Land Management. Not one sale has been halted by the Service for failure to meet the requirements of the Endangered Species Act.

We share Senator Packwood's concern regarding the potential economic impacts of protecting sufficient old growth forests to allow for the continued survival of the northern spotted owl. However, we believe that the Endangered Species Act contains mechanisms to balance economic concerns with the protection of endangered species and that the Act should be allowed to work. To short circuit all of these carefully crafted provisions is simply unwarranted.

We hope you will not make a commitment to support Senator Packwood's amendment until the Senate has had the opportunity to consider and debate his proposal. The Endangered Species Act has worked well because Federal agencies have sought solutions within the Act, not exemptions from the Act. We fear that this amendment will seriously damage the integrity and the effectiveness of the Endangered Species Act.

Sincerely,



MICHAEL BEANE / EDF
202-265-9384

LATEST PARKWOOD AMEND

DOESN'T WORK --

5/1

DOLE WORKER CAMP

Amend -- + REVIEWS

will fix for it.

KM FOR YOUR
FILE
KAB

101st, 2nd, Vote 303
October 23, 1990, 9:24 p.m.

Daily Cong. Rec. P. S-Xx

motion to table

BILL NO.: H.R.5769

AMENDMENT NO.: 3112

SUBJECT: not yet available *spotted out*

RESULT: Motion to Table Agreed to

YEAS (62)

NAYS (34)

DEMOCRATS (48)

REPUBLICANS (14)

DEMOCRATS (4)

REPUBLICANS (30)

Adams
Akaka
Baucus
Bentsen
Biden
Bingaman
Breaux
Bryan
Bumpers
Burdick
Byrd
Conrad
Cranston
Daschle
DeConcini
Dixon
Dodd
Exon
Fowler
Glenn
Gore
Graham
Harkin
Hollings
Kennedy
Kerrey
Kohl
Lautenberg
Leahy
Levin
Lieberman
Metzenbaum

Cohen
D'Amato
Durenberger
Heinz
Humphrey
Jeffords
Kassebaum
Kasten
Lugar
McCain
Roth
Specter
Warner
Wilson

Boren
Ford
Heflin
Inouye

Armstrong
Bond
Boschwitz
Burns
Chafee
Coats
Cochran
Danforth
Dole
Domenici
Garn
Gorton
Grassley
Hatch
Hatfield
Helms
Lott
Mack
McClure
McConnell
Murkowski
Nickles
Packwood
Pressler
Rudman
Simpson
Stevens
Symms
Thurmond
Wallop

Mikulski
Mitchell
Moynihan
Nunn
Pell
Pryor
Reid
Riegle
Robb
Rockefeller
Sanford
Sarbanes
Sasser
Shelby
Simon
Wirth

NOT VOTING (3)

DEMOCRATS (2) REPUBLICANS (1)

Bradley--2 Gramm--2
Kerry--2PY

LIVE PAIRS (1)

PRESENT AND GIVING RECEIVING

Johnston--PN Kerry--2PY

EXPLANATION OF ABSENCE:

1 - Official Business	AY - Announced Yea
2 - Necessarily Absent	AN - Announced Nay
3 - Illness	PY - Paired Yea
4 - Other	PN - Paired Nay

**Statement of
SENATOR AL GORE**

on the Packwood Amendment

Mr. President, I rise to speak against the Packwood amendment, which, if enacted, would undermine one of this Nation's most significant environmental laws, the Endangered Species Act.

When Congress enacted the Endangered Species Act in 1973, we set a noble goal for this nation: to halt the accelerating rate of species extinction worldwide and to pass on to future generations a world rich in plants and wildlife. The Endangered Species Act represents an essential step in our national commitment to protect biodiversity both here and abroad. We must not retreat on that commitment.

There are a few who say the Endangered Species Act is too tough and is blocking economic development. Nothing could be farther from the truth. Of more than 48,000 projects reviewed by the U.S. Fish and Wildlife Service between 1979 and 1986, less

than one percent were found to jeopardize the continued existence of threatened or endangered species. And in those rare instances where an irreconcilable conflict between development and endangered species conservation arises, the Endangered Species Act provides a way to resolve those conflicts, through convening of the Endangered Species Committee, the so-called "God Committee."

The Packwood amendment seeks to convene the Endangered Species Committee within 90 days to consider exempting logging of ancient forests on federal lands in the Pacific Northwest from the requirements of the Endangered Species Act. This course of action is both ill-conceived and unjustified. Convening the Endangered Species Committee now is premature, since an irreconcilable conflict has not been shown to exist. Not a single timber sale has been halted in the Northwest under the Endangered Species Act since the northern spotted owl was listed as a threatened species. Thus, the Packwood amendment seeks to fix an Endangered Species Act that is not broken.

More importantly, the Packwood amendment would surely lead to continued destruction of a national treasure, the last remaining 10 percent of the ancient forests of the Pacific Northwest. If we are to have any success in persuading our friends in other regions of the world to preserve their rain

*Should we
argue this here*

forests and their biodiversity, we must set the example in this country. The Packwood amendment sends exactly the wrong message to our neighbors around the globe. Accordingly, I urge my colleagues to join me in opposing this bill.

Let me speak to the details of how the Endangered Species Act provides for decisionmaking in circumstances such as the one we now face in the case of the spotted owl.

The Endangered Species Act contains one very simple and fundamental proposition. That proposition is simply that no agency of the federal government ought to be responsible for jeopardizing the continued existence of any endangered species. This is the essence of the Act's section 7.

The way in which Section 7 works is important to understand in order to appreciate why the amendment before us is both unnecessary and undesirable. Each time a federal agency plans any action that may affect an endangered species, that agency and the U.S. Fish and Wildlife Service formally consult about the likely impacts of the proposed action. The purpose of that consultation process is not simply to determine the effects of the proposed action, but also to explore alternatives or

modifications to the proposed action that would avoid what Section 7 seeks to prohibit -- jeopardizing the survival of an endangered species.

Remarkably, the process has worked extraordinarily well. For virtually every one of the thousands of federal actions that have gone through the consultation process of Section 7, the final result has been either a finding of no jeopardy, or a determination that a reasonable and prudent alternative existed that avoid causing jeopardy. This has even been true in the case of timber harvesting on Forest Service lands with spotted owls.

Since the spotted owl was listed as a threatened species, the Fish and Wildlife Service and the Forest Service have consulted on some 700 timber sales; not one has been halted as a result of the owl's listing. Nor has any timber sale on lands of the Bureau of Land Management been halted by virtue of the spotted owl's listing.

The other important thing to understand about Section 7 is that the Endangered Species Act does not dictate how the federal actions that are the subject of its consultation process should be defined. The Act gives flexibility to the Fish and Wildlife Service and the Forest Service (or the Bureau of Land Management) to determine the scope of their consultations. If they wish to

consult about a single timber sale in a single forest, they may do so; if they want to consult about hundreds of timber sales in many different forests, they may also do so. They have the flexibility to define the scope of the federal actions that they consult about as they see fit. They have chosen, properly, to consult about actions broad enough to package together many related activities, but not so broad that it is impossible to provide a meaningful evaluation of their impact on endangered species.

The amendment before us virtually preordains the sort of conflict that the Endangered Species Act has so often succeeded in avoiding. It does so by foreshortening the Section 7 consultation process, and by requiring that the subject of that consultation process include everything even remotely related to timber management in seventeen different National Forests and eight different BLM districts, based on plans that are outdated, imprecise, and no longer reflective of the policies and programs of the agencies that promulgated them.

The only possible outcome of this wholly artificial consultation process -- as the sponsor of this amendment well knows -- will be a finding that the Forest Service and the BLM cannot ensure that no jeopardy will result to the spotted owl. As a result of that finding, the Endangered Species Committee (or

* Shortened
* info to be
considered
forced

consultation
process
changed

5

the "God Committee", as it is popularly known) will be asked to consider an exemption from the Endangered Species Act, something they have done only twice before in the last twelve years.

logging

There is nothing in the law today that prevents the Forest Service and the BLM from asking the Fish and Wildlife Service to consult about the same comprehensive action that this amendment seeks to exempt. What prevents them from doing so is not the law, but rather the fact that they know the outdated forest and land management plans are simply too imprecise to allow for the meaningful evaluation of their impact on the spotted owl. Those plans set timber harvest targets, but they fail to specify precisely where the timber harvests are to occur; without that information, how can their impact on the owl be assessed?

now OK -
has not mandated

Furthermore, these plans do not reflect important changes in agency policy since their promulgation. They do not, for example, reflect any of the recommendations of the so-called Jack Ward Thomas Study, which we in Congress directed to be prepared to guide forest management in the Northwest. They do not even reflect important policy decisions made by these agencies years earlier. The BLM plans, for example, do not reflect commitments made by that agency to the Oregon Department of Wildlife in 1983 and 1987 concerning the protection of areas around owl nesting sites. In short, this amendment strips these agencies of the

6

discretion they now have under this law to put forward their own proposals for consultation, and forces them instead to put forward a proposal that we in Congress would design.

This amendment is unprecedented and unnecessary. I urge that it be defeated.

####

7

What is wrong with the latest Packwood amendment?

The critical issue is: what "agency action" will be the subject of Endangered Species Act section 7 "consultation" as a result of this amendment.

The amendment defines "agency action" as "the land use plan in effect on the date of enactment...as the plan may be amended or superseded by a subsequent plan prior to the completion of consultation."

The plans "in effect" are the old, outdated Forest Service and BLM plans that were prepared before the owl was listed as a threatened species. Those plans do not account for the owl and, as such, will result in a jeopardy opinion under the Endangered Species Act. Locking the agencies in to consulting on the old plans makes a mockery of the consultation process.

The language that allows the agencies to amend the plans "prior to completion of consultation" does not help. The amendment mandates that consultation end 90 days after enactment of this bill. There is no way that the agencies can amend their plans in the next 90 days. The formal process they must follow to amend the plans takes much more than 90 days.

Subsection (c) provides that, in addition to the agency action as defined above, the agencies shall submit all guidance or studies concerning the owl "for consideration during consultation." This is meant to pick up the Thomas report.

That is fine, but it does not help, *because the Thomas report should be considered anyway.*

Even if the Fish and Wildlife Service can "consider" the Thomas report during consultation, this amendment requires them to issue a decision on the old plan. It does not allow them to issue an opinion on the old plan as modified by the Thomas report. This is a fatal flaw.

Appropriations - 1979

June 18, 1979 Duncan Amendment

"exempts Tellico dam from
any law that might hinder
construction."

* Adopted on voice vote

* Final passage of bill - 359/29

Senate does not include similar language
Conferees cannot agree on language.

Conference report back to House, w/
language as pt. of disagreement.

Aug 1, 1979 - Breaxx Amendment

* Raises pt of order - language
re: Tellico Dam is legislation
on an appropriations bill.

* Pt. of order rejected 156/258.

Gore votes agt. the pt. of order
(which is a vote for the dam.)

President considers veto

Sasser sends letter urging him not to
veto. (Not known if any other
letters sent or if Gore
signed Sasser letter.)

President signs.



ESSA

Appropriations

1979 - FY 80 Public Works App.
included provision allowing completion

Jun 18, 79 - ~~House passed~~ Duncan amendment
Exempted Tellico dam
from any law that
might hinder construction. 359/29 -
accepted on a voice vote.

Conferees Disagreed
House put back in (Senate ultimately
accepted.)
Bevill puts in →

Aug 1 - Breacy Amendment (Vote # 425)
Laws Pt. of order - Tellico Dam
not in order to

Appropriations

156y/258N → the votes, ^{NO} agt. The Pt. of
order - pt. of order rejected
→ Gore does not speak.

President considers veto
Sasser sends letter / Not vetoed.

ESSA

Reauthorization

78 - ESSA amended
creating Bad Committee

Jan 79 - Brd. said no exemption

Final Passage - A Gooty
yes
Duncan provides
Gore votes on Duncan
Gore does not vote

The Clerk read as follows:

Senate amendment No. 7: Page 3, line 20, insert "of which \$6,165,000 shall be for the Office of Inspector General."

MOTION OFFERED BY MR. BEVILL

Mr. BEVILL. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. BEVILL moves that the House recede from its disagreement to the amendment of the Senate numbered 7 and concur therein.

The motion was agreed to.

The SPEAKER pro tempore. The Clerk will designate the next amendment in disagreement.

The Clerk read as follows:

Senate amendment No. 8: Page 4, line 14, strike out "\$413,878,000" and insert "\$444,478,000."

MOTION OFFERED BY MR. BEVILL

Mr. BEVILL. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. BEVILL moves that the House recede from its disagreement to the amendment of the Senate numbered 9 and concur therein, with an amendment, as follows: In lieu of the sum named in said amendment, insert the following: "\$448,478,000."

The motion was agreed to.

The SPEAKER pro tempore. The Clerk will designate the next amendment in disagreement.

The Clerk read as follows:

Senate amendment No. 9: Page 5, line 6, insert:

The anticipated revenues from Uranium Enrichment Activities for the fiscal year and authorized to be retained by Public Law 93-438 shall be deemed to have been appropriated to the Department for purposes of 31 U.S.C. 665.

MOTION OFFERED BY MR. BEVILL

Mr. BEVILL. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. BEVILL moves that the House recede from its disagreement to the amendment of the Senate numbered 9 and concur therein.

The motion was agreed to.

The SPEAKER pro tempore. The clerk will designate the next amendment in disagreement.

The Clerk read as follows:

Senate amendment No. 14: Page 12, line 7, insert:

SEC. 104. Not to exceed 5 per centum of any appropriations made available for the current fiscal year for Energy Supply, Research and Development Activities; Uranium Supply and Enrichment Activities; General Science and Research Activities; Atomic Energy Defense Activities; and Departmental Administration Activities may be transferred between such appropriations, but no such appropriation, except as otherwise provided, shall be increased or decreased by more than 5 per centum by any such transfers, and any such proposed transfers shall be submitted promptly to the Committee on Appropriations and the appropriate authorizing committees of the House and Senate for approval.

MOTION OFFERED BY MR. BEVILL

Mr. BEVILL. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. BEVILL moves that the House recede from its disagreement to the amendment of the Senate numbered 14 and concur therein.

The motion was agreed to.

The SPEAKER pro tempore. The Clerk will designate the next amendment in disagreement.

The Clerk read as follows:

Senate amendment No. 17: Page 14, line 1, insert "or would result in adverse diminution of generation at hydroelectric facilities on the Niagara or St. Lawrence Rivers: *Provided further*,".

MOTION OFFERED BY MR. BEVILL

Mr. BEVILL. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. BEVILL moves that the House recede from its disagreement to the amendment of the Senate numbered 17 and concur therein.

The motion was agreed to.

The SPEAKER pro tempore. The Clerk will designate the next amendment in disagreement.

The Clerk read as follows:

Senate amendment No. 22: Page 19, line 18, insert "": *Provided further*, That currently unobligated funds from appropriations made under this heading for payment of Teton Dam disaster claims shall be available to pay costs to irrigation spaceholder contracting entities for American Falls Dam pursuant to section 7, Reclamation Safety of Dams Act (Public Law 95-578), and shall be nonreimbursable in accordance with the terms of that Act."

MOTION OFFERED BY MR. BEVILL

Mr. BEVILL. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. BEVILL moves that the House recede from its disagreement to the amendment of the Senate numbered 22 and concur therein.

The motion was agreed to.

The SPEAKER pro tempore. The Clerk will designate the next amendment in disagreement.

The Clerk read as follows:

Senate amendment No. 24: Page 27, line 5, insert:

SEC. 305. Notwithstanding the provisions of the Act of October 1, 1962 (76 Stat. 677), the Secretary of the Interior, in the development of the irrigation lands located in Block 26 of the Columbia Basin project, Washington, shall take such action as may be necessary to assure that the per acre repayment obligation shall be the same as those set forth in repayment contract 11 R 1444, dated October 9, 1945, as amended, between the United States of America and the South Columbia Basin Irrigation District, but in no case shall such per acre repayment obligation exceed \$131.60.

MOTION OFFERED BY MR. BEVILL

Mr. BEVILL. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. BEVILL moves that the House recede from its disagreement to the amendment of the Senate numbered 24 and concur therein.

The motion was agreed to.

The SPEAKER pro tempore. The Clerk will designate the next amendment in disagreement.

The Clerk read as follows:

Senate amendment No. 30: Page 31, line 8, strike out "": *Provided*, That notwithstanding the provisions of 16 U.S.C., chapter 35 or any other law, the Corporation is authorized and directed to complete construction, operate and maintain the Tellico Dam and Reservoir project for navigation, flood control, electric power generation and other purposes, including the maintenance of a normal summer reservoir pool of 813 feet above sea level."

MOTION OFFERED BY MR. BEVILL

Mr. BEVILL. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. BEVILL moves that the House insist on its disagreement to the amendment of the Senate numbered 30.

PREFERENTIAL MOTION OFFERED BY MR. BREAUX

Mr. BREAUX. Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

Mr. BREAUX moves that the House recede and concur in the amendment of the Senate numbered 30.

The SPEAKER pro tempore. Does the gentleman from Alabama wish to debate this amendment?

Mr. BEVILL. Yes, Mr. Speaker, I believe I am allotted 1 hour; is that correct?

The SPEAKER pro tempore. The rule would provide 30 minutes on the side. The gentleman from Alabama (Mr. BEVILL) is recognized for 30 minutes.

Mr. BEVILL. Mr. Speaker, I yield 5 minutes to the gentleman from Louisiana (Mr. BREAUX).

Mr. BREAUX. Mr. Speaker, I do not think anyone who has been here for any length of time, who knows the record that I have tried to put together in this House, can in any way, shape, form, or fashion classify me as being a crazy environmentalist or some sort of nut when it comes to environmental issues. I have tried to amend the Clean Water Act, to amend the Clean Air Act; I am one of the major sponsors of efforts termed, "Rape, run, burn," which dealt with the State of Alaska. Coming from that background, I stand before the House and ask that we uphold the integrity of this House and the integrity of the legislative process and vote to remove the Tellico Dam project from the authorizing process, from the appropriations process.

I make this motion to recede and concur in Senate amendment 30 not in defense of the snail darter, nor in opposition to the Tellico Dam in the State of Tennessee, but I do so in defense of the legislative process and the integrity of this House, which I think is at stake.

The issue here is very simple. Is it appropriate for the House to attach a rider on an appropriation bill which exempts the Tellico project in Tennessee from all laws? Not just on endangered species, but from all law; not just clean water laws or clean air laws, but all laws which might affect the operation; from dam safety laws, from all laws. The amendment was added late one Monday afternoon with about 40 seconds of debate. It was not printed in the CONGRESSIONAL RECORD. It was not read on the floor. It was not described, and it was not debated. I think that is a pretty smooth move, but one that I really do not think we should approve of.

I offer a preferential motion to recede from that position and to reinstate and give us a chance to vote against the Tellico Dam project. Let me explain something. All the Members have heard about the Tellico project. We voted on it many times. I, as author of this amend-

ment, have voted to support the project, but I do not do it today because I think that if Members look at it from an economic standpoint it comes out as being a turkey; a turkey not only to us from an economic standpoint but as anything else.

The Endangered Species Act had become unworkable and unreasonable. I am on the committee that wrote that, but we made some changes in the last 2 years. We recommend that projects like the Tellico Dam and Grey Rocks project, a reservoir project, should be considered specially because they are very important projects, that we should have a mechanism to balance the economic value of that project without voting on a snail darter or some other endangered species.

□ 2000

So this Congress by a large margin voted special amendments to the Endangered Species Act. We created a seven-man committee, a seven-person committee, to consider whether to give special exemptions to projects that have been found to be in conflict with the Endangered Species Act. We did it after we debated this issue for 13 days in our committee process. We have created a seven-man committee. The committee has met. It included a member representing the Secretary of Agriculture, the Secretary of the Army, the Chairman of the Council of Economic Advisers, the Administrator of EPA, the Secretary of the Interior, a member from NOAA, and a representative of the State where the project exists, the State of Tennessee. They unanimously—not by a close vote, not by almost doing it—every single member unanimously, after they listened to the merits of whether we should balance this thing economically, voted not to grant an exemption. That is what this House voted for. That is the process we voted for, and I think we should abide by it. We should not say we will go out and play baseball and then when we lose the game, say the answer to that is change the rules. That is not the rule. And also on this we should abide by the decision of the Endangered Species Committee.

It is not a question of whether it is the snail darter or Tellico Dam. It is a question of the integrity of the process of this House. The committee has voted unanimously not to grant an exemption, and I do not think this House, the Congress, wants to be put in the position of every time we have a project having the House sit down and spend days debating the merits of it. We have created a special committee, a seven-man committee, and balanced it with environmentalists and people who believe in construction, and they came down unanimously with the decision that this is not a good project. I support that decision. If it was any other way, I would support it because I have voted for it on a number of occasions.

Some people have said, "Well, it is almost finished; let us go ahead and build it."

TVA said, if you put a pencil to it, to the credit just to complete the re-

maining 10 percent, the benefits will justify the costs. That just does not wash.

The SPEAKER. The time of the gentleman has expired.

Mr. BEVILL. Mr. Speaker, I yield 30 seconds additionally to the gentleman.

Mr. BREAU. I thank the gentleman. I would just conclude with the fact that we have a process. This Congress has supported that process. Economically, the committee found that it does not wash. It is not a good project. The benefits already there can be used. There are basically roads, and there are structures that are going to remain after the process.

I say let us support the congressional process. Let us vote for the preferential motion I have offered.

Mr. MYERS of Indiana. Mr. Speaker, I yield 3 minutes to the gentleman from California (Mr. McCloskey).

Mr. McCLOSKEY. Mr. Speaker, my colleague, Ed FORSYTHE, ranking member of the Fish and Wildlife Subcommittee. He asked that I make this comment in support of the motion of the gentleman from Louisiana with which I concur. In 1979 the Committee on Merchant Marine and Fisheries conducted 13 days of oversight hearings on the Endangered Species Act, primarily because of the Tellico Dam and the snail darter controversy.

As a result of these hearings, the Congress approved legislation providing for more balance in the Endangered Species Act. The Tellico Dam project was considered under the new criteria of the act and it was determined by the newly created Endangered Species Committee that the benefits associated with completing the project did not outweigh the economic and environmental disadvantages of the project. The Representative from Tennessee who sat on the Endangered Species Committee concurred. A report prepared by the General Accounting Office supports the conclusion of the committee that benefits of the Tellico Dam will not be proportionate with the project costs.

Despite this overwhelming evidence the House adopted an amendment exempting the Tellico Dam from the Endangered Species Act and from several other statutes including the Federal Water Pollution Control Act, the National Historic Preservation Act, acts regulating dam safety, and the Fish and Wildlife Coordination Act. The House took this action after 42 seconds of consideration during which the amendment was not fully read let alone debated. In addition, the amendment violated the House rules on germaneness as legislating in an appropriations bill.

I might add that I was present on the floor when the amendment was offered by the gentleman from Tennessee, considered as read, quickly accepted by both the majority and minority floor managers without any discussion or debate that would reveal that we were voting the refunding of the controversial Tellico Dam and setting aside five major Federal laws in the process.

The word "Tellico" was the key word in this amendment. It has been under consideration by this House and its committees. I want to submit to my friends on the Committee on Appropriations that this does attack the integrity of the House proceedings. I would not want to come to you with a Fish and Wildlife bill with an agreement that the gentleman from New York (Mr. MURPHY) and I had agreed on. I think we all understand the danger of condemnation from the public if we adopt without reading an amendment of this degree of controversy.

I would plead with the members of the Committee on Appropriations that they vote in favor of this motion that we set aside the process by which that amendment was adopted for the substantive reason that the economic and environmental costs of the Tellico Dam outweigh its benefits, and for the procedural reasons that the amendment in question was not understood nor fully considered by the House, and it was also in violation of the House rules as being nongermane. I urge the adoption of the gentleman's motion.

Mr. BEVILL. Mr. Speaker, I yield 3 minutes to the gentlewoman from Tennessee (Mrs. BOUQUARD).

Mrs. BOUQUARD. Mr. Speaker, I rise in favor of the motion made by the gentleman from Alabama.

Mr. Speaker, there are several important facts which must be fully understood if we are to make the proper decision on the completion of the Tellico Dam. First of all, I have had any number of public meetings, discussions and debates with those both supporting and opposing the completion of this project. My very strong impression, reinforced time and again in public forums, is that the majority of people in this area support the completion of the project.

A second fact, we are not now discussing whether or not to build a dam on the Little Tennessee River. The dam is built. The amount of \$103.2 million of the TVA's ratepayers money has been spent. If the project does not go forward the \$103.2 million is a total loss.

A third fact, when this project was initiated there was no Endangered Species Act. If there had been, I doubt we would be facing this question again today, but the fact is that the dam was constructed in accordance with the existing laws and regulations.

A fourth fact, this project will produce some 200 million kilowatt hours of electricity each year. This is a sufficient amount to provide electrical energy for 20,000 homes. To meet peak demand of this amount at the present time TVA burns about 15 million gallons of oil. With completion of the project that oil could be diverted to better purposes. The value of that electricity at today's TVA rates is \$2.7 million. Given the probability of TVA rate increases this summer and fall, the value of that electricity will almost certainly exceed \$3 million by the end of this year. Given the environmental advantages of hydroelectric power, com-

pletion of the project will contribute to both clean air and clean water goals.

A final fact, though my list is by no means inclusive. If anyone wonders what has become of our friend the snail darter in this controversy, you might like to know that the present snail darter population in the Little Tennessee River is seven. Some 2,500 of the progeny of the 710 who transplanted in this new habitat last year now survive in the Hiwassee River. A second transplant has been made to the Holston River.

Now my colleagues, if you can, with a straight face, answer that you are willing to write off \$103.2 million in expended dollars, and give up some \$3 million worth of electricity a year in order to protect the continued existence of seven snail darters, then I think your constituents would want you to oppose this motion. If on the other hand, your district demands of you a certain amount of fiscal responsibility and common sense, then I believe you have no alternative but to support our colleague from Alabama, complete this project, and move on to the more crucial business of this House.

Mr. MYERS of Indiana. Mr. Speaker, I yield 3 minutes to the gentleman from Delaware (Mr. EVANS).

Mr. EVANS of Delaware. Mr. Speaker, I rise in support of the motion by the gentleman from Louisiana (Mr. BREAUX) to recede and concur with the Senate on the matter of the Tellico Dam exemption contained in the House version of the energy and water appropriations bill.

There are two issues at stake here. First, should the Tellico Dam be exempted from the Endangered Species Act and other Federal laws so that construction may proceed? Second, should we breach the integrity of the Endangered Species Act as amended only last year, and indeed, tamper with the very rules of the House of Representatives?

I will not consider the issue of the Tellico Dam here in detail, except to say that from what I know of the project it does not make economic sense. Entirely apart from snail darters and the like, it is my understanding that recent studies by the Tennessee Valley Authority and others indicate that a developed river—without a dam—has greater economic potential in terms of jobs and revenues than does a dammed river and reservoir.

My fundamental concern, however, is in the integrity of the legislative process. As a member of the Merchant Marine and Fisheries Subcommittee on Fish and Wildlife Conservation, I participated in the careful and thorough evaluation of the Endangered Species Act in the 95th Congress.

Our subcommittee and committee reviewed the act in detail, and, in the end, we settled on a process which carefully balanced economic and environmental interests. The keystone of these revisions was the establishment of a process by which any project could be considered for an exemption by a Cabinet level review committee. The Tellico Dam project was considered by this committee, and by unanimous vote the exemption was denied.

Now for the proponents of the Tellico project to turn around and come back to Congress for additional consideration strikes me as "sour grapes." I repeat, the Tellico Dam had its day in court and it was found wanting.

Not only did the Tellico proponents come back to Congress for an exemption, but it was done so in a mere 40 seconds of discussion on the floor of the House. Nobody knew what was happening, and in the process, two Rules of the House were violated—germaneness and legislating in appropriation bills.

Mr. Speaker, this is not the way to conduct the business of the House. We established a fair process for considering exemptions to the Endangered Species Act, a process specifically intended to relieve the Congress from the burden of having to review case-by-case exemptions. It is time we reaffirmed our faith in the integrity and wisdom of that process—and in the procedures of the House—by adopting the motion to reject an exemption for the Tellico Dam.

The Senate has twice defeated a motion to grant a Tellico Dam exemption. I urge my colleagues to join with the Senate on this matter and give the Endangered Species Act a chance to work. Otherwise, we make a mockery of the legislative process.

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Mr. BEVILL. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Michigan (Mr. DINGELL).

Mr. DINGELL. Mr. Speaker, I thank my dear friend for yielding to me.

Mr. Speaker, it is appalling to me that the House must again take its time and resources to debate an issue that was put to rest in the 95th Congress. The special body that was constituted by a special act of this Congress to deal with exemptions has said that the Tellico Dam should be laid mercifully to rest on grounds that it has no economic merit. I believe that that judgment having been made we should stand with it. I think we should certainly not overrule that on the basis of an amendment adopted without proper notice to the House and under circumstances where its germaneness is open to very serious question and where that action of the House constituted legislation on an appropriation bill.

Mr. Speaker, the issue before us today was the result of an amendment adopted on the basis of 40 seconds of discussion on a proposal that was neither printed in the CONGRESSIONAL RECORD, fully read, described nor debated. The adoption of the amendment violated the House rules of germaneness and legislating in an appropriations bill. The Members of this body have an institutional responsibility to reject this language.

The issue of the Tellico Dam has been resolved. It was put to rest in the 95th Congress during the extensively debated amendments to the Endangered Species Act. The 1978 amendments to that act created, as one of the provisions, a seven-member Exemption Board to make case-by-case determinations relative to project exemptions from the Endangered

Species Act. The Tellico project was given full and thorough consideration by this Board—and an exemption was not granted. Now, we have been asked to overrule that judgment on the basis of an amendment that was adopted under the most questionable circumstances.

On the substance of completing the Tellico Dam, there have been several misleading statements regarding the efficacy of completing the dam and the aggregate benefits which would accrue by removing environmental and other constraints currently impeding its completion.

It has been represented that it has taken \$111 million to construct the Tellico Dam. This is simply not true. TVA figures indicate the dam cost \$13.8 million in materials and \$8.7 million in labor totalling \$22.5 million. The major expense of this questionable project was in the purchase of 60 square miles of private farmland and in the construction of roads.

It has also been represented that the completion of the Tellico Dam would constitute a viable and substantial source of hydroelectric power to the TVA system. This statement is not factual. The primary purpose—in the initial construction of the project—was for recreational purposes. The dam has no generators and the only power that could be generated by Tellico would be 22 megawatts produced by water flowing through a small barge canal. Compared to the existing 27,000 megawatt electrical capacity of TVA and the projected capacity of 42,000 megawatts by 1985—it is insignificant.

Tellico has already been condemned by the seven-member Endangered Species Exemption Committee because of its very poor benefit-cost ratio and absence of contribution to a worthwhile purpose.

The amendment should be stricken from this conference report and I urge my colleagues to support the Breaux motion.

I urge my colleagues not to negate the excellent work of this body during the 95th Congress. I move that we take immediate action to rid the House of the albatross of Tellico Dam and defeat this amendment.

Mr. MYERS of Indiana. Mr. Speaker, I yield 3 minutes to the ranking minority member of the Committee on Appropriations, the gentleman from Massachusetts (Mr. CONTE).

Mr. CONTE. Mr. Speaker, I rise in opposition to the chairman's motion to insist on the House position with respect to amendment No. 30. I believe the House language pertaining to the Tellico Dam which is the subject of amendment No. 30 sets a bad legislative precedent and only serves to illustrate how desperate the backers of this project must be to see it brought to completion. I cannot believe that those who support this amendment would want to see this same language uniformly applied to all water projects.

Last year, as a result of the Supreme Court decision relating to the Tellico Dam and the Endangered Species Act, this body passed a bill which later be-

came law establishing a Cabinet-level review committee to weigh the value of preserving endangered species against the economic and social benefits of development projects. Now just a year later, the Tellico Dam question is again before us in spite of the fact that the review committee that we ourselves established has rendered a negative decision on Tellico. If it was not our intention to abide by the reasoned decisions of this review committee, why in the world did we establish it in the first place?

The fact of the matter is that this Cabinet-level committee which included a representative of the Governor of Tennessee reviewed the Tellico Dam project very carefully and after reviewing all the facts this committee voted unanimously that the project simply could not be justified on economic grounds. I call your attention to a letter recently sent to the Speaker by Secretary Andrus who chaired that seven-member committee. The Secretary states that among other things influencing their decision, the committee found that:

First. The annual cost of the project exceeded its annual benefits;

Second. The dam would not meet even Bureau of Reclamation standards for dam safety since the dam would not be able to contain the maximum flood thought probable to occur; and

Third. Any electricity produced would be an indirect benefit of the additional waterflow created by the dam and would not add to the capacity of the TVA system.

What concerns me the most at this time, however, is not whether the snail darter would become extinct as a result of this project or even whether the project is economically justified. What concerns me the most now is the manner in which the proponents of this project have proceeded through the language of this amendment to try to force this project down the throats of the American people. We have absolutely no sound basis on which to overturn the decision of the Cabinet-level committee we ourselves had established to resolve this matter and neither can I think of a single good reason why this Congress should summarily exempt a water project from all statutory requirement, which is what the language of amendment No. 30 does.

Whether or not this language was originally added to the House-passed bill in the "dead of the night," as some have euphemistically called the proceedings that occurred, it is true that this amendment was not published and was not read in its entirety before being quickly agreed to by the committee. The experience in the other body was just the opposite. The amendment was presented and thoroughly debated and, in the subsequent recorded vote taken, the amendment was defeated. I think we should move to recede and concur to the Senate on amendment No. 30, thereby abiding by the decision reached by the Cabinet-level committee, a decision process we ourselves agreed was fair.

Mr. Speaker, I want at this point to read a letter from the Secretary of Interior to the Speaker:

U.S. DEPARTMENT OF THE INTERIOR,
Washington, D.C., July 23, 1979.
Hon. THOMAS P. O'NEILL, Jr.,
Speaker, U.S. House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: I understand that the House of Representatives will soon be considering the conference report on H.R. 4388, the Energy and Water Development appropriations bill. On behalf of the Administration, I wish to express our grave concern over the House language which specifically exempts the Tellico Dam from the Endangered Species Act and all other provisions of law. I understand that because the conferees reported this provision in technical disagreement, the House will be considering it separately from the rest of the conference report.

Last year Congress directed a special seven-member Committee, which I chair, to determine whether the dam should be exempted from the Endangered Species Act. In doing so, we were directed to balance the project's economic and related benefits against the benefits of reasonable and prudent alternatives which are consistent with conserving the snail darter, which would become extinct if the dam is completed. After due consideration, we found that Tellico does not meet the criteria set forth by the Congress and that on the basis of economic considerations alone, the project is not justified. In fact, when the committee compared the full range of project benefits against only the remaining costs of completing the Tellico Dam (\$35.9 million), we found that the costs of the project exceed its benefits.

We also found:

The annual benefits of the project are \$6.52 million, compared to annual cost of \$7.25 million.

Although project costs to date total \$103.2 million, only \$22.5 million has been sunk into actual construction of the dam. Remaining expenditures were for salaries, land acquisition, road construction and the like, most of which have produced or will produce benefits regardless of whether the dam is completed.

Tellico does not meet current Bureau of Reclamation standards for dam safety. In its 1978 report TVA states that the maximum design flood is larger than the maximum flood that can be contained by the dam. That is, in the event of such a flood, the dam would be overtopped and breached, resulting in more significant destruction than if the dam had not been built. Furthermore, for less severe floods, flood control benefits are slight, totalling \$1.04 million annually, and a substantial portion of these benefits can be achieved by other means, such as local zoning.

Although project proponents claim substantial energy benefits for Tellico, actual benefits total only \$2.7 million annually and are based on the cost saved by substituting 200 million kwh of hydroelectric power for power which would otherwise be generated by TVA's existing coal fired and nuclear facilities. The dam itself has no generators but rather creates water flow to provide additional generation for the nearby Fort Loudon Dam. This electricity is not available as peaking power and does not add to the capacity of the TVA system.

Although approximately one third of annual project benefits (\$2.5 million) are justified on the basis of flat water recreation, there are twenty-four other such sites located within a sixty mile radius of the dam. In addition, annual recreation benefits of the free-flowing river alternative exceed those of the dam by \$600,000.

Creation of the Tellico reservoir would tie up approximately \$40 million in private land values, resulting in an annual loss of \$4 million in benefits from alternative land uses.

Contrary to the claims of project proponents, the snail darter transplant into the Hiwassee River has not yet been determined to be successful. Based on the most recent surveys, the river's population of the fish is down from a year ago. An additional problem is posed by the rail transport of sulfuric acid in the Hiwassee River gorge since, according to the TVA report, a large acid spill could conceivably decimate the Hiwassee snail darter population.

In addition to the serious economic problems I have described, the Tellico amendment to H.R. 4388 overturns the deliberate and thoughtful process designed by Congress to deal with conflicts between endangered species and development projects. Moreover, it creates a most serious and undesirable precedent of summarily overturning all statutory requirements relating to the construction of a water project.

Given the uneconomic nature of the Tellico project and the other factors cited above, I intend to urge the President to veto the Energy and Water Development appropriations bill if the language on Tellico remains in the bill, and I urge you to recede and concur with the Senate's position on this matter.

Sincerely,

CECIL D. ANDRUS,
Secretary.

Mr. EDGAR. Mr. Speaker, will the gentleman yield?

Mr. CONTE. I yield to the gentleman from Pennsylvania.

Mr. EDGAR. Mr. Speaker, I would like to commend the gentleman.

I think the gentleman in the well has pointed out the importance of trying to focus attention on negative aspects of the Tellico Dam. It is one of several bad dam projects throughout our Nation that should be not constructed. I think the gentleman makes some very cogent points by detailing the strong objection of Cecil D. Andrus, Secretary of the Interior, to this project.

I hope that the Members of the House have read the "Dear Colleague" letters that have been circulated on this issue and that we can resolve it once and for all tonight.

I would also hope that the President would veto this bill as suggested in the July 23, 1979, letter to House Speaker THOMAS P. O'NEILL, JR. by the Secretary of the Interior.

Mr. MYERS of Indiana. Mr. Speaker, I yield 13 minutes to the gentleman from Tennessee (Mr. DUNCAN).

Mr. DUNCAN of Tennessee. Mr. Speaker, the Tellico Dam has had a long and a colorful history. Its construction has always been a part of the overall plan for the Tennessee River. In 1965 and 1966 the Congress held hearings on the proposal and because of the support and merit of the project, funds were appropriated and have since been appropriated by every succeeding Congress, including the Congress in 1968. In fact, funds were approved by the Senate and House in 1978 for the closure and completion of the dam which may I say only cost \$1,800,000 to close the dam.

Funding was first approved by the

Congress on September 21, 1966, by vote of 354 to 25.

I doubt there is more than two or three Members still in the House that voted against the project funds in 1966.

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Those who voted for the project in 1966 and also in succeeding appropriations through the years exercised good judgment.

Mr. Speaker, I know that Congress is not in the habit of starting and funding and stopping projects it does not want to construct. This is why most of the present membership has expressed its desire that the project be completed.

On October 14, 1978, on a rollcall vote of 231 to 157 the House approved an amendment to exempt the Tellico project from the Endangered Species Act. Because the 95th Congress was close to adjournment the Senate did not accept the amendment.

Mr. Speaker, I would now like to talk about the Endangered Species Committee that was appointed. The committee was not properly appointed and, in fact, the Tennessee member was not appointed as required under the act until 1 day after the hearings were held in Tennessee by hearing officers. Neither the Tennessee member lives in the area nor has the Tennessee member or any member of the Endangered Species Committee visited the eastern part of Tennessee where this dam lies. I personally asked them to do so.

Mr. Speaker, the entire committee is still a complete stranger to the local community and its situation. Because of alleged illegal functions of the committee and the failure to disclose vital information, it is now the subject of a lawsuit that is pending in the U.S. Sixth Circuit Court of Appeals in Cincinnati.

This project is in my district, Mr. Speaker, and if I did not think it was a good project and justified I would not be here today advocating its completion.

The gentlewoman from Tennessee (Mrs. Bouquard) has mentioned how it would have saved her home in 1973 if the project had been completed at that time. At that time it had been stopped because of an environmental statement.

Mr. Speaker, I have on several occasions surveyed the public opinion on the Tellico project. In March 1977 I sent a one-question questionnaire to the three counties directly affected by the Tellico Dam, the Counties of Monroe, Loudon, and Blount.

Of those who responded 1,537 were for completion of the dam and 116 were opposed.

In 1977 the Tennessee General Assembly by almost unanimous vote, and again in 1978, passed a joint resolution advocating completion of the project. When the project was first approved there was not a handful of opposition. After the project was started some opposition did develop but much of it was outside the area. The opposition first tried the route of the environmental impact statement. They were thwarted in this attempt by the Federal courts in Knoxville and although they did bring about some delay, and I did mention the case where the

gentlewoman from Tennessee (Mrs. Bouquard) lost her home. I would like to call your attention to three letters that have for some reason been hidden until yesterday. The TVA requested three Federal agencies to review this project and they received reports and may I ask did the Endangered Species Committee include these reports in their record? Absolutely not. Did they ask for them?

They were from the Department of Energy Western Area Power Administration, the Department of Transportation and the Department of State's Agency for International Development. I would like to include these letters in the RECORD. They are as follows:

OFFICE OF THE SECRETARY OF TRANSPORTATION,
Washington, D.C., October 17, 1978.

MR. S. DAVID FREEMAN,
Chairman, Office of the Board of Directors,
Tennessee Valley Authority, Knoxville,
Tenn.

DEAR MR. FREEMAN: We appreciate having had the opportunity to review the joint Tennessee Valley Authority (TVA) and Department of Interior (DOI) report on the status of, and the available options, on the Tellico Dam project. We regret that our comments could not be made available within your suggested time frame but are submitted since your conclusions are not yet final.

We found the report to be most interesting and consider that it carefully balances the opposing possibilities of further development. However, [we believe the substantial evidence of support by public officials including the U.S. Congress, the Governor of Tennessee and the Tennessee State legislature, when considered along with the potential economic benefit of completing the original project, is persuasive of the view that the project should be completed.] We consider that the problem of danger to the Snail Darter is being adequately addressed and that a habitat can be developed in which that species can exist.

While the project has had a contentious history, present evidence appears to provide a basis for a decision to complete the project.

Sincerely,
RAY WARNER, Director,
Office of Intergovernmental Affairs.

DEPARTMENT OF ENERGY,
Golden, Colo., October 6, 1978.

MR. S. DAVID FREEMAN,
Chairman, Office of the Board of Directors,
Tennessee Valley Authority, Knoxville,
Tenn.

DEAR MR. FREEMAN: Thank you for the invitation to review your draft report "Alternatives for Completing the Tellico Project." We wish to present the following comment for the official record.

We note that Congress approved the initial appropriation of funds for the Tellico Project in 1966. Currently construction of the project as originally planned is 95 percent complete. Expenditures and obligations through May 1978 have totaled \$109,000,000. Costs for completion of the original project are estimated as \$19,400,000. Additional spillway capacity to handle a new inflow design flood as computed by the USBR would cost an additional \$12,500,000.

New evidence indicates the Snail Darter fish can survive and reproduce in the Hiwassee River where it was transplanted in 1975. If additional studies prove that the Tennessee River would no longer be critical habitat, then the Snail Darter could be removed from the endangered species list and reservoir development could proceed.

The report also shows that reservoir devel-

opment has a superior benefit-cost ratio. Although it stated that "benefit-cost comparisons often have been compromised by the unevenness and unreliability of benefit forecasts," the proven and predictable benefits of clean hydro-power generation are apparent.

Since the oil embargo of October 1973, the National oil consumption has risen above pre-embargo levels despite a 75 percent increase in the retail price of gasoline. Oil imports have risen to the point that they total 43 percent of the oil consumed in this country, causing the attendant problems of inflation, balance of payment deficit, and weakening of the dollar abroad.

Our experience indicates that the demand for hydro-power resources in the Western Area Power Administration marketing area increases as the availability of nonreplaceable oil and gas fuel resources for electric generation decline. The development of new hydro-power resources and their integration with thermal generation provides a desirable and efficient use of the resources available for electric power production.

We trust the Snail Darter will be removed from the endangered species list, or other suitable solutions will be found and, therefore, support the alternative for reservoir development and early completion of the Tellico Project.

Sincerely,
ROBERT L. MCPHAIL,
Administrator.

DEPARTMENT OF STATE,
Washington, D.C. September 20, 1978.

MR. S. DAVID FREEMAN,
Chairman, Office of the Board of Directors,
Tennessee Valley Authority, Knoxville,
Tenn.

DEAR MR. FREEMAN: Governor Gilligan has asked me to review and comment on the draft Alternatives for Completing the Tellico Project, submitted with your letter of August 16, 1978.

The draft report establishes the baseline of evaluation of available options as the present condition of the Tellico project. Therefore the broad consideration is whether it is more beneficial to complete the project as planned, complete and operate it purely as a flood control facility or remove it.

On balance the difficult areas of judgment are the soft, unquantifiable areas such as the cultural, aesthetic and historical. These are highly personal and subjective. The report seems to give greater weight to these factors than would appear appropriate considering the present condition of the project and its history, including the extensive debates conducted in the region and in the Congress before construction started in 1967.

While the report was prepared jointly by TVA and Interior, the Interior team did not include water resources experts from the USGS and the Bureau of Reclamation.

Our overall assessment supports the reservoir alternative based on the following considerations:

Agricultural benefits and programs can be achieved reasonably with any of the alternatives. The reservoir option providing flood protection and water management for supplemental irrigation should provide greater overall benefits for agriculture. While the land used for the reservoir is indeed the prime quality land, it is a small portion of the prime and good agricultural land available in the immediate and down stream area.

The reservoir option offers a better mix of opportunities including industrial and other development. Water transport and a power dimension are increasingly valuable in view of energy requirements. The multi-objective potential of this option is superior to the other options.

Most of the cultural and educational objectives can be adequately achieved with the reservoir option. The one constraint in edu-

cational and historical activities which cannot be entirely met in the actual location of reconstructed and restored facilities on the exact original site. There is considerable disagreement on the critical value of this.

There is no guarantee that the small darter would survive if nothing in its habitat were changed. The fact that reproduction at another site seems to be proceeding successfully supports this doubt. There is no evidence to indicate any economic or ecological benefit to be derived from protecting the small darter from extinction. NEPA has definite economic objectives and considers the harmonious interaction of man and his environment important.

The benefit-cost evaluations show a smaller spread in calculated benefits for the reservoir option indicating a better basis for these values. The cost of removing the dam is greater than that required to complete the reservoir, while the reservoir option yields a higher benefit-to-cost ratio.

Sincerely yours,

FRANK A. DiMATTEO, P.E.,
Director, Office of Engineering.

Mr. Speaker, there are hundreds of people including this Member who believe that the snail darter thrives and reproduces in many streams and rivers in Tennessee, Kentucky, North Carolina and elsewhere. From June 1975 to February 1976, 710 snail darters were transferred from the Little Tennessee River to the Hiwassee River. In August 1978, a survey of the Hiwassee population reveals a present population of over 2,500 snail darters.

A second transplant is being successfully carried out now in the Holston River while the population of the Little Tennessee has declined and perhaps the Tellico project has aided the survival of the snail darter by removing it to a free-flowing river. The Little Tennessee River was never a free-flowing river, regardless of what the Secretary might have said.

Mr. Speaker, the Little Tennessee has not been a flowing river since about 1917. The return of the Little Tennessee River to a free-flowing stream would require not only the removal of the Tellico Dam but would require the removal of 4 other dams as well. I hope we will not overlook the human considerations of this controversy. Should a worthless, unsightly, minute, unedible minnow outweigh a possible injustice to human beings?

A great deal has been said about farmland.

Mr. Speaker, the land has already been sold. The farmers do not own the land. They have given up their homes and their land for the projects. Roads have been taken out and homes have been demolished. The bridges are out. The topsoil has been taken off the land that the water will cover. Stumps and debris have been put in the area preparing it for flooding when the dam is closed.

Mr. Speaker, even if the original owners could repurchase their land they would perhaps be financially unable to do so. Would it be just and right to sell the land to other prospective land purchasers? Should it be sold in international land sales as has been suggested?

The U.S. Government promised these people a dam and a reservoir. Now, the people wonder whether they

have surrendered their homes for nothing, whether they have been duped by a government that says one thing and does another.

Have the taxpayers paid their taxes to build a project that is being terminated after the expenditure of millions of dollars and there is no validity to the fact that you do not count the wages paid to the wage earners as part of the cost of a project. That is the way, I suggest, some Government agencies figure their costs of certain projects.

Mr. Speaker, the people feel betrayed. It is a case of abandoned promises, of raised expectations ending in disappointment.

Mr. Speaker, I feel that the Congress will right this wrong. The money has been spent and estimates given in 1977 showed that removal of the dam would cost over \$16 million and because of inflation that estimate, without doubt, today, is conceivably more.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. MYERS of Indiana. Mr. Speaker, I yield the gentleman from Tennessee (Mr. DUNCAN) 2 additional minutes.

Mr. DUNCAN of Tennessee. Mr. Speaker, the President has sounded the call for nonpetroleum energy sources as the gentlewoman from Tennessee (Mrs. BOUQUARD) stated. The project will produce 200 million kilowatt hours of electricity per year, enough electricity to furnish heat for 20,000 homes.

Mr. Speaker, there have been some direct and implied statements that the amendment to H.R. 4388, authorizing the completion of the dam was something that happened in the late hours of the day when few Members were present. That is an incorrect statement. The House was full of people. The statement also reflects against the credibility of the chairman of this committee, the gentleman from Alabama (Mr. BEVILL), and the ranking minority member, the gentleman from Indiana (Mr. MYERS), and also this Member.

I think all of us know who these men are. We know they are men of highest credibility and highest integrity.

Mr. Speaker, the amendment was distributed through this House. It was on the table Friday before it came up on Monday and if we knocked out everything that this House when minority and majority agree to accept certain amendments, we would certainly have a lot less laws today than we now have on the books.

□ 2030

It was handled in a proper manner, and, as I say, the entire Tennessee delegation supports this. It is not like Dickey-Lincoln. If they do not want a dam up there, that is all right with us.

But we do support this, and we want the Government to do what they said they would do and not let the judgment of the Congress be transferred to some hasty committee that failed to give consideration not only to the Congress but also to the people of our area.

Mr. QUILLEN. Mr. Speaker, will the gentleman yield?

Mr. DUNCAN of Tennessee. I yield to the gentleman from Tennessee.

Mr. QUILLEN. Mr. Speaker, I thank the gentleman for yielding.

I want to associate myself with the remarks of the gentleman from Tennessee (Mr. DUNCAN), and I commend him for the very fine statement he has made.

When we look at this realistically, it seems absurd certainly to have a little 3-inch snail darter stop the completion of a dam in which the taxpayers have already invested over a \$100 million. I made that point in the Committee on Rules when the extension of the Endangered Species Act was before us last year. I had a goldfish there which I had sent out for and bought, a small goldfish, and I put it in a pitcher and displayed it in front of me. I held it up for all to see in the committee, and I said, "A fish this small is stopping the construction of this dam, the Tellico Dam."

Where are our priorities, and what should we do? The gentleman from Tennessee (Mr. DUNCAN), in whose district the dam is located, has explained the situation and has put forth a good statement. I believe we all should support his views.

Mr. Speaker, I thank the gentleman for yielding.

Mr. WAMPLER. Mr. Speaker, will the gentleman yield?

Mr. DUNCAN of Tennessee. I yield to the gentleman from Virginia.

Mr. WAMPLER. Mr. Speaker, I thank my colleague for yielding.

Mr. Speaker, I think the gentleman from Tennessee (Mr. DUNCAN) has very ably described the situation that is before the House tonight. Approximately one-third of the congressional district that I represent lies within the watershed of the Tennessee Valley.

I have followed the history of this project with great interest, and the Committee on Appropriations has considered this matter very carefully. It seems to me they have given it fair and adequate consideration. As we are grasping for solutions to the critical energy problem facing our Nation this very night, it seems to me that only common sense would dictate that we proceed with the completion of this project so that it can serve the purposes for which it was originally envisioned, and for which it has been constructed.

Mr. Speaker, I urge all my colleagues to vote no on the motion to recede and concur and support the committee's position.

Mr. DUNCAN of Tennessee. Mr. Speaker, I urge all of my colleagues to support the Committee on Appropriations.

Mr. MYERS of Indiana. Mr. Speaker, I yield myself 5 minutes.

Mr. Speaker, terms like "Tellico" and "Dickey-Lincoln" have become household words in this House. Some of us feel like we have been up and down this path so many times, we have the merits and the arguments committed to memory.

The impression has been left here today—and it comes from statements made in the other body as well as from other

sources—that the amendment offered in the House a few weeks ago on this bill was passed in the dark of the night, in violation of House rules. That was not the case.

During the proceedings today on the Emergency Energy Conservation Act of 1979, this same procedure was used four times. I refer to accepting language that was not read. It is a common practice. It was not done for the purpose of misleading our colleagues because most of us understood the language. The gentleman who spoke earlier suggests that we somehow violated the rules of the House. I am sorry if he had that impression because it was not intended.

Mr. BREAU. Mr. Speaker, will the gentleman yield?

Mr. MYERS of Indiana. I yield briefly to the gentleman from Louisiana.

Mr. BREAU. Mr. Speaker, does the gentleman mean to give the House the impression that in four instances where the amendments were not read, in all four instances the amendments were not germane to the bill, as was the case in this instance?

Mr. MYERS of Indiana. Tellico Dam was initiated in 1967. Would the gentleman agree with that?

Funds were appropriated by the Congress for the construction of the Tellico Dam in most of the subsequent years. Congress intended that the project be constructed.

Mr. BREAU. Mr. Speaker, will the gentleman yield?

Mr. MYERS of Indiana. I yield briefly to the gentleman from Louisiana.

Mr. BREAU. Mr. Speaker, the real point on the amendment that was adopted was the fact that it exempted the Tellico Dam from all laws. I am sure the members of the Committee on Appropriations did not consider that to be appropriation language. It was a major exemption for the dam that was added to comply with all the laws of the United States of America.

That very much tends to sound like authorizing language to the gentleman from Louisiana.

Mr. MYERS of Indiana. Mr. Speaker, the House adopted an amendment to the endangered species authorization to exempt Tellico from the endangered species laws. The vote was taken on October 14 of last year.

Mr. Speaker, the RECORD had not been printed before the conferees from this body caved in to the other body and took that language out. It had passed this House rather substantially last fall. It is not something new to this body.

I would also like to point out that this project was started long before the Endangered Species Act was passed. It was about the same time we started construction here on the Washington subway, and because it was already under construction, it was grandfathered in. It was exempted from the Endangered Species Act provisions. So there is a good case there, and there are many precedents.

Mr. Speaker, Griffin Bell, the Attorney General, appeared before the Supreme

Court last year and said that Congress time after time had expressed its intention that the Tellico Dam should be completed. The Supreme Court invited this amendment. It was done in the open; it was not done in the dark of night. It is common procedure. We did proceed under the normal rules and customs of the House, and we merely responded to the invitation by the Supreme Court that Congress should act in this fashion if it wanted the reservoir to be completed.

Over \$117 million has been appropriated to date. It will take just a very small sum to finish this project.

Mr. Speaker, I will state to my friends that the issue, frankly, is not one of jurisdiction. The issue is whether we want to see \$117 million of our taxpayers' money wasted with absolutely no benefits. The Court has cited in the dissenting views that it would be a waste of money. They were sure that Congress would see fit to insure that the dam is completed because not to do so would be a waste of the taxpayers' funds.

So that is the issue today. We can disguise it if we want to and say it is a jurisdictional problem, but the real issue is: Shall we waste the taxpayers' money, or shall we give the people of Tennessee the benefits from the investments that have already been made?

Mr. BREAU. Mr. Speaker, will the gentleman yield?

The SPEAKER pro tempore. The time of the gentleman from Indiana (Mr. MYERS) has expired.

Mr. BEVILL. Mr. Speaker, I yield myself such time as I may desire.

Mr. Speaker, I will make this brief. We have been through this several times. This project, the Tellico Dam, was stopped because of a snail darter that was placed on the endangered species list.

I would like to point out, as the Members know, we supported and voted for the Endangered Species Act. You and I support that act. It is a good act. We are not apologizing for the Endangered Species Act, but you and I may disagree on how it is being interpreted.

That is the issue here today. The people in Tennessee want this dam completed. Every Member of the Tennessee delegation has signed a letter to me urging its completion. All eight House Members from Tennessee signed the letter. They want the dam completed. Are we going to stand here and argue about jurisdiction in this situation?

□ 2040

Let us talk about the snail darter a little bit. I met Friday with the TVA biologists, who are favorable to the snail darter. We paid \$850,000 for a report on the snail darter and the studies that have been made. We paid for moving the snail darter from the Little Tennessee River, where the Tellico Dam is, to the Hiwassee River. This effort has been going on now for about 3 years. We are spending money to protect the snail darter. That is what the people want. They want the snail darter protected. I do and you do, and we have protected it. The snail darter is safe.

Let me tell you what it says in this study:

The snail darter we are transplanting were scined from the Little Tennessee River. A total of 710 snail darters were transplanted to three sites in the Hiwassee. Periodic surveys of the areas where transplants were made show that the darters remain in good condition. Observation of young snail darters one year later indicates successful reproduction and recruitment in the Hiwassee. This strengthens confidence that the future of the snail darter can be assured.

Let me turn to another statement. This is the biologists' report, the biologists who have followed the snail darter all the way through this issue.

Two years of successful reproduction and juvenile recruitment in the Hiwassee River shows the transplant to be successful to this time. There is no reason to believe that the Hiwassee River snail darter population will not be a self-sustaining population.

We have done our duty. We have taken care of the snail darter. We have moved it. Actually, it is doing better now than it was doing in the Little Tennessee River. They told me last Friday that there were thousands of them now in the Hiwassee River. They moved 710 over there, and now there are thousands. So the snail darter is taken care of.

I know people are very sincere about this. The Secretary of Interior has been quoted tonight. He testified before my committee. He said, "We know that the Endangered Species Act is being used by some people." That was his testimony, and it is in the record.

We know that is taking place. You and I know that.

So we have a small dam here. Maybe you will say, "That is not much oil that it will save." The undisputed testimony shows that the water from this dam will go to the hydroelectric plant down below it and will provide heat for 20,000 homes.

What we have is a project that is 99 percent complete. The people want it. The people of Tennessee want it. You hear these folks who are opposing it, and making all this noise. You do not hear that from the people in Tennessee. So we need to move on. We have \$100 million invested in this project, and I do not think that you and I want it to be a monument to this Congress action, against the will of the people of Tennessee, against the delegation, the elected representatives of the people of Tennessee, who want this project completed. The snail darter is safe. Now let us make some energy.

The Members heard the gentlewoman from Tennessee talk about her home being washed away because of the floods that could have been prevented. So, we know we need the energy; we know we need the flood control; we know that the industrial park is important; we know that the recreation part of it is important. We could go over these points too. But this is essentially an energy project. We must start taking these things more seriously. Actually, we are doing just as the Supreme Court of the United States suggested we do. They said, "If Congress wants it, they ought to provide for it." That is what the gentleman from Tennessee provided for in his amendment.

Mr. RITTER. Mr. Speaker, will the gentleman yield?

Mr. BEVILL. I yield to the gentleman from Pennsylvania.

Mr. RITTER. I thank the gentleman for yielding.

Mr. Speaker, I would like to commend the gentleman from Alabama (Mr. BEVILL) for his remarks and I would like to point out that the President, in his domestic policy review of solar energy, talked about reaching a 20-percent goal by the year 2000. The Members may not realize this, but in that 20 percent he included hydroelectric, he included both "low-head" and "high-head"—hydro; yes, he included energy generated by hydroelectric dams, big and small.

It is indeed hard to link hydroelectric with solar energy. But nevertheless that is part of the overall energy equation whether as part of "solar energy" or not. That is part of the ability of this country to reduce its dependence on imported energy. Now we are going to have to explain to the American people all over this country how \$100 million of the taxpayers' money has been spent and wasted, how a snail darter, which has now been taken care of, shifted into other hospitable waters, still can gum up the works. We are going to have to explain to the American people how we cannot even get our act together to go ahead with an energy producing dam that is 99 percent complete. Is it any wonder that the American people's confidence in its leadership is so low? I think those Members who vote against this Tellico Dam completion will have a very rough time explaining this waste to their constituents at a time of severe energy shortage and a need to move forward.

Mr. BEVILL. I thank the gentleman for his contribution.

Mr. RUDD. Mr. Speaker, will the gentleman yield?

Mr. BEVILL. I yield to the gentleman from California.

Mr. RUDD. I thank the gentleman for yielding.

Mr. Speaker, I would like to associate myself with the very fine remarks of the distinguished gentleman in the well. This dam provides energy, it provides flood control, it enhances navigation on the river, and it provides recreation, all beneficial to humankind and the citizens of this country, and I see no reason why a snail darter that does not even provide food for humankind should be under consideration at this time.

I hope that this motion will be defeated.

Mr. McCLOSKEY. Mr. Speaker, will the gentleman yield?

Mr. BEVILL. I yield to the gentleman from California.

Mr. McCLOSKEY. I thank the gentleman for yielding.

Mr. Speaker, I think the gentleman in the well mistakes the purpose of this motion. I think many of us might agree, as the gentleman who made the motion did, with the merits of the Tellico Dam. But I ask the gentleman, is not this in fact legislation on an appropriation bill? And I have heard the gentleman on countless times, and the rest of us who are not on the Appropriations Committee have

tried to respect this process, because we do not think we should legislate on an appropriations bill. But the way this amendment was adopted, and the amendment itself, would not the gentleman concede it is major legislation to set aside five major laws to give this dam an exemption? That is our objection. Not on the merits that the gentleman has powerfully argued, but the question of whether or not on an appropriation bill there ought to be major legislation enacted without warning to the other Members of the House.

Mr. BEVILL. Mr. Speaker, you could argue that issue on nearly every bill that comes to this floor. If we do not quit talking about jurisdiction, this country is going to be on its knees with respect to energy. This amendment was handled properly. I did not offer it. I accepted it. The gentleman from Tennessee offered the amendment. Three hundred Members were sitting there. Nobody questioned it.

Mr. McCLOSKEY. I was sitting in the front row.

Mr. BEVILL. The gentleman was sitting in the front row. And that was the time to object under our rules. The gentleman knows that.

But let us not stop there. The gentleman knows that we voted 231 to 157 to continue this project last year.

Mr. BEARD of Tennessee. Mr. Speaker, will the gentleman yield?

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

Mr. BEARD of Tennessee. Mr. Speaker, it befuddles my mind that we continue to talk about technicalities such as legislation on an appropriation bill. I wish the Members of this House would take the time or, if they have not seen it, call for a copy of the GAO report that has been done on the enforcement and the implementation of the Endangered Species Act. If the Members did this they would see that you can throw technicalities to the wind, because the endangered species and the activation of the implementation of this Act has been an absolute and total disaster and insult to the integrity of this body as to the direction this body gave it in starting this bill.

The report shows how, on different projects, they turned their head the other way because a particular Member happened to be on a particular committee that could prove embarrassing if they placed this particular endangered species on the list. So, therefore, the head was turned the other way. It just so happens, apparently, the Member of this particular district did not happen to be on the right committee and, therefore, because of connections here and there, the snail darter was placed on it, with no priority, and this project has been stopped. It fulfilled every environmental responsibility when it was initiated. I ask every Member of this House, the way the Endangered Species Act was originally written, under suspension, with approximately 45 minutes of debate, talking about the coyote and the elephant, or whatever, some of the big items, never some of these other ones talked about, 45 minutes of debate. And

I want to tell every Member here that each one of you could have had a project that had fulfilled every environmental requirement in this country, it could be 2 years down the road to the project having been completed, and it could have been stopped the way the bill was written. That is what happened here. It was a terrible piece of legislation the way it was written. Intent was good; the legislation and the interpretation by the Department enforcing it was absolutely an embarrassment, and some heads should roll.

So I say to this body and I plead with this body to look at this and to correct this terrible injustice and vote to exempt the Tellico Dam.

Mr. EDGAR. Mr. Speaker, will the gentleman yield?

Mr. BEVILL. I yield to the gentleman from Pennsylvania.

Mr. EDGAR. I thank the gentleman for yielding.

Mr. Speaker, I would like to suggest that everyone take a look at the letter by Cecil Andrus that is dated July 27, which was read by my colleague, the gentleman from Massachusetts (Mr. CONTE).

I happen to support the amendment offered by the gentleman from Louisiana (Mr. BREAU), and I would suggest to the House that this particular dam should be looked at under the regular authorizing process and not put into this legislation at this time.

□ 2050

I would hope that this bill is not vetoed by the President because this amendment is included.

I would like to just say one thing that disturbs me in this debate. We are talking about the Endangered Species Act, and we are talking about its implementation, whether we are for it or against it, and the way it is processed.

I was disturbed by one of the statements of one of the gentlemen from the other side who said that just because this snail darter is small, it somehow is insignificant.

If you look at the human race in comparison to the universe, we are small, and we are insignificant. I think most of us would agree that we have a right to exist on this particular planet. There is a very delicate interface in the world in which we live in terms of environmental species.

I think that, while you may not like the looks, the shape, or the size of the snail darter, it has a right to exist.

I draw your attention to Cecil Andrus' letter, where he states specifically that, contrary to claims of the project proponents, the snail darter's transplant into a separate river has not yet been determined to be successful.

Mr. WHITTEN. Mr. Speaker, will the gentleman yield?

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

Mr. WHITTEN. May I say, we had Mr. Andrus before our Committee on Appropriations. He agreed with us that this act was not supposed to be used to stop projects, that one could meet the requirements of the act if one transferred the endangered species to new areas.

That occurred in the State of Mississippi. They moved the whooping crane so as not to stop a highway. Mr. Andrus' testimony was, if we did what was done here, it was all right. Mr. Andrus proved it by his own action in going along with Highway 10 in the southern part of our State.

Mr. BEVILL. I thank the gentleman for his contribution. I urge my colleagues to vote "no" on the preferential motion of the gentleman from Louisiana (Mr. BREAUX).

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the preferential motion offered by the gentleman from Louisiana (Mr. BREAUX).

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. BREAUX. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 156, nays 258, not voting 20, as follows:

[Roll No. 425]

YEAS—156

Addabbo	Fowler	Nolan
Ambro	Frost	Oberstar
Anderson, Ill.	Fuqua	Obey
Andrews, N.C.	Gibbons	Ottenger
AuCoin	Gilman	Patterson
Barnard	Gingrich	Paul
Barnes	Ginn	Pease
Beard, R.I.	Gradison	Petri
Bedell	Green	Peyser
Beltonson	Guarini	Preyer
Biaggi	Hall, Ohio	Pritchard
Bingham	Harkin	Pursell
Blanchard	Harris	Rangel
Bonior	Hawkins	Ratchford
Bonker	Heckler	Reuss
Brademas	Hefner	Richmond
Breaux	Hollenbeck	Rinaldo
Brodhead	Holtzman	Rodino
Brown, Calif.	Hughes	Rosenthal
Burton, John	Jacobs	Russo
Burton, Phillip	Jeffords	Sabo
Carr	Kastenmeier	Sawyer
Chisholm	Kildee	Scheuer
Clay	Kindness	Schroeder
Cleveland	Kostmayer	Selberling
Conte	LaFalce	Sensenbrenner
D'Amours	Lee	Shannon
Deckard	Lehman	Simon
Dellums	Leland	Skelton
Derrick	Levitas	Snowe
Derwinski	Long, Md.	Solarz
Dicks	Lowry	Spellman
Dingell	Lundine	St Germain
Dodd	McCloskey	Stack
Donnelly	McDade	Stewart
Downey	McHugh	Stokes
Drinan	Maguire	Studds
Early	Markey	Swift
Eckhardt	Marks	Udall
Edgar	Matsui	Van Deerlin
Edwards, Calif.	Mattox	Vanik
Emery	Mikulski	Vento
Erdahl	Mikva	Walgren
Evans, Del.	Miller, Calif.	Waxman
Fazio	Minish	Weaver
Fenwick	Mitchell, Md.	Weiss
Ferraro	Mitchell, N.Y.	Williams, Mont.
Fish	Moakley	Wirth
Fisher	Moffett	Wolfe
Florio	Mottl	Yates
Foley	Nedzi	Zeferetti
Ford, Mich.	Nelson	

NAYS—258

Abdnor	Alexander	Andrews,
Akaka	Anderson,	N. Dak.
Albosta	Calif.	Annunzio

Anthony	Goldwater	Myers, Ind.
Applegate	Gonzalez	Myers, Pa.
Archer	Goodling	Natcher
Ashbrook	Gore	Neal
Ashley	Gramm	Nichols
Aspin	Grassley	Nowak
Atkinson	Gray	O'Brien
Badham	Grisham	Oskar
Bafalis	Gudger	Panetta
Bailey	Guyer	Pashayan
Baldus	Hagedorn	Patten
Bauman	Hall, Tex.	Perkins
Beard, Tenn.	Hamilton	Pickle
Benjamin	Hammer-	Price
Bennett	schmidt	Quayle
Bereuter	Hance	Quillen
Bethune	Hanley	Rahall
Bevill	Hansen	Rallsback
Boggs	Harsha	Regula
Boland	Hefel	Rhodes
Boner	Hightower	Ritter
Bouquard	Hillis	Roberts
Bowen	Hinson	Robinson
Brinkley	Holt	Roe
Brooks	Hopkins	Rose
Broomfield	Horton	Rostenkowski
Broyhill	Howard	Roth
Buchanan	Hubbard	Rousselot
Burgener	Huckaby	Roybal
Burlison	Hutto	Royer
Butler	Hyde	Rudd
Byron	Ichord	Runnels
Campbell	Jeffries	Santini
Carney	Jenkins	Satterfield
Carter	Jenrette	Schulze
Cavanaugh	Johnson, Calif.	Sebelius
Chappell	Johnson, Colo.	Sharp
Cheney	Jones, N.C.	Shelby
Clausen	Jones, Okla.	Shumway
Clinger	Jones, Tenn.	Shuster
Coelho	Kazen	Slack
Coleman	Kelly	Smith, Iowa
Collins, Ill.	Kemp	Smith, Nebr.
Collins, Tex.	Kogovsek	Snyder
Conable	Kramer	Solomon
Corcoran	Lagomarsino	Spence
Corman	Latta	Staggers
Cotter	Leach, Iowa	Stangeland
Coughlin	Leach, La.	Stanton
Courter	Leath, Tex.	Steed
Crane, Daniel	Lederer	Stenholm
Crane, Philip	Lent	Stockman
Daniel, Dan	Lewis	Stratton
Daniel, R. W.	Livingston	Stump
Danielson	Lloyd	Symms
Dannemeyer	Loeffler	Synar
Daschle	Long, La.	Tauke
Davis, Mich.	Lott	Taylor
Davis, S.C.	Lujan	Thomas
de la Garza	Luken	Thompson
Devine	Lungren	Traxler
Dickinson	McClory	Trible
Dixon	McCormack	Ullman
Dornan	McDonald	Vander Jagt
Dougherty	McEwen	Walker
Duncan, Oreg.	McKay	Wampler
Duncan, Tenn.	Madigan	Watkins
Edwards, Ala.	Marriott	White
Edwards, Okla.	Martin	Whitehurst
English	Mathis	Whitley
Erlenborn	Mavroules	Whittaker
Ertel	Mazzoli	Whitten
Evans, Ind.	Mica	Wilson, Bob
Fary	Michel	Wilson, C. H.
Fascell	Miller, Ohio	Wilson, Tex.
Findley	Mineta	Winn
Fithian	Molohan	Wright
Filippo	Montgomery	Wyatt
Ford, Tenn.	Moore	Yatron
Fountain	Moorhead, Calif.	Young, Alaska
Frenzel	Moorhead, Pa.	Young, Fla.
Gaydos	Murphy, N.Y.	Young, Mo.
Gephardt	Murphy, Pa.	Zablocki
Gialmo	Murtha	
Glickman		

NOT VOTING—20

Bolling	Garcia	Stark
Brown, Ohio	Holland	Treen
Conyers	Ireland	Volkmer
Diggs	McKinney	Williams, Ohio
Evans, Ga.	Marlenee	Wyder
Flood	Murphy, Ill.	Wyllie
Forsythe	Pepper	

□ 2100

The Clerk announced the following pairs:

Messrs. TRAXLER, ATKINSON, ABDNOR, MAZZOLI, and KOGOVSEK changed their vote from "yea" to "nay."

Messrs. WIRTH and BEARD of Rhode Island changed their vote from "nay" to "yea."

So the preferential motion was rejected.

The result of the vote was announced as above recorded.

□ 2110

The SPEAKER pro tempore (Mr. WRIGHT). The question is on the motion offered by the gentleman from Alabama (Mr. BEVILL).

The motion was agreed to.

The SPEAKER. The Clerk will designate the last amendment in disagreement.

The Clerk read as follows:

Senate amendment No. 37: Page 32, line 21, insert:

SEC. 502. There is appropriated, out of any money in the Treasury not otherwise appropriated, for an additional amount for "Construction of an Extension to the New Senate Office Building" \$57,480,700, to remain available until expended: *Provided*, That the amount of \$142,627,700 shall constitute a ceiling on the total cost for construction of the Extension to the New Senate Office Building: *Provided further*, That, it is the will of the Senate that upon completion of the Hart Senate Office Building, the Committee on Rules and Administration shall provide for the expeditious removal of personnel, equipment, and furnishings from the buildings known as the Carroll Arms, the Senate Courts, the Plaza Hotel, and the Capitol Hill Apartments and that said buildings shall remain unoccupied by the Senate until demolished: *Provided further*, That the Architect of the Capitol shall, within six months of the vacating of the buildings known as the Carroll Arms, the Senate Courts, the Plaza Hotel, and the Capitol Hill Apartments, submit to the Senate Committee on Appropriations estimates of the cost of razing and demolishing said buildings together with recommendations for future use, renovation, or demolition of the building known as the Immigration Building.

MOTION OFFERED BY MR. BEVILL

Mr. BEVILL. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. BEVILL moves that the House recede from its disagreement to the amendment of the Senate numbered 37 and concur therein.

Mr. BEVILL. Mr. Speaker, I yield such time as she may desire to the gentleman from Louisiana (Mrs. Boggs).

Mrs. BOGGS. Mr. Speaker, I rise in support of the motion by the gentleman from Alabama, the chairman of the subcommittee, that the House recede and concur in the Senate amendment to title V of the energy and water appropriation bill.

First, let me say that I have supported the completion of the Hart Senate Office Building in the past, including the vote last year when this House rejected further funding for construction. I firmly believe in the concept of comity: That we in this body must leave the internal decisions and management of the other body to the 100 men and women who have been elected by the people of the United States to membership in that body.

Second, I share the concerns of many of you that the vehicle for consideration of this issue, the energy and water bill, is probably not the most appropriate one

provisions will serve to alert the Fish and Wildlife Service about possible conflicts between the listed species and human activities. Certainly it is in everybody's interest for conflicts between species and development activities to be discovered and resolved at the earliest possible opportunity.

The bill includes a number of other provisions which I will not attempt to summarize at this time. All of them, however, address issues that were raised during the lengthy set of oversight hearings conducted by the Subcommittee on Fisheries and Wildlife Conservation and the Environment.

I believe that the provisions of this bill are exceedingly comprehensive. They were only adopted after a rigorous markup process and after lengthy hearings. Nevertheless, some Members are going to say that we are acting too fast—that we should slow down and wait for the anticipated GAO report on the operation of the act.

Well, we do not need to wait. We have enough information right now. More importantly, the GAO report is not going to say anything that we do not already know. The GAO has already briefed members of the committee on the results of their study. They have indicated to us that H.R. 14104 addresses nearly all of their major concerns. The GAO is concerned about the administration of the Endangered Species Office, but any administrative deficiencies are more appropriately handled by good oversight, and not through legislation.

I believe that the committee has reported a good, balanced bill. I urge the House to adopt it. ●

● Mr. LEGGETT. Mr. Chairman, I support H.R. 14104. This bill is a compromise—there is no secret about that. I doubt that any one Member that worked on this measure is totally satisfied with it. Nevertheless, H.R. 14104 introduces some needed flexibility into the Endangered Species Act where none currently exists.

We all agree that the Endangered Species program is worthwhile and ought to be continued. We have discovered, as a result of the Tellico decision, that one provision in the act is significantly devoid of the flexibility, however, and needs to be amended.

Section 7 of the Endangered Species Act prohibits any action authorized, funded or carried out by a Federal agency from adversely modifying the critical habitat of an endangered or threatened species. As the chairman of the committee has explained, the U.S. Supreme Court interpreted this provision to require Federal agencies to avoid adverse impacts on endangered species—no matter what the cost. The Supreme Court decision may be good law, but it is very bad public policy.

We know that there are few, if any, absolutes in this world. We should be concerned about the conservation of endangered species, but I, for one, am not prepared to say that we should be concerned about them above all else. One of the real anomalies of our wildlife statutes is that they permit entire runs of non-endangered salmon to be destroyed by

development activities—and this has happened up and down the west coast—but they prohibit the taking of a single endangered snail darter. Clearly, we need to offer more protection for the salmon, and a little less protection for the snail darter.

The Subcommittee on Fisheries and Wildlife Conservation and the Environment, which I chair, developed the bill before the House today only after conducting an extensive set of oversight hearings on the Endangered Species Act. These hearings covered a period of 8 days and included testimony from 70 witnesses. We literally heard from everyone who wanted to testify on this subject.

In addition to the evidence developed during the oversight hearings, the committee has been briefed by the General Accounting Office which is conducting its own study of the administration of the Endangered Species Act.

In general, I believe that the evidence presented to the committee indicates that the Endangered Species Act has worked fairly well. Section 7 of the act has been the subject of litigation in four instances. Two projects, Tellico Dam and the Graylocks Reservoir in Wyoming, have been enjoined as a result of section 7. One other project, an interchange on Interstate 10 in Mississippi, was modified as a result of section 7. In the fourth case the court decided that the project would not have an adverse impact on the species involved.

Thus, at this juncture only two projects have been enjoined as a result of the Endangered Species Act. And in fact, the court opinion on the Graylocks Reservoir suggests that the refusal by the Rural Electrification Administration to consult with the Fish and Wildlife Service was largely responsible for the injunction in that instance.

Despite the small number of projects affected by the Endangered Species Act to date, the committee determined that there is a real potential for future conflicts under the act as currently written. Although the act has been in effect since 1974, the section 7 regulations were not promulgated until January of this year. Thus, all Federal agencies were not put on notice of the full meaning of section 7 until the Tellico decision in June of this year.

More importantly, only a handful of critical habitats for endangered species have been designated to date. As of August 1978, critical habitats had been designated for 32 separate species. An additional 56 critical habitats have been formally proposed for designation. In addition, there are some 140 domestic animal and plant species currently listed as either endangered or threatened for which no critical habitat has yet been proposed. Additionally, there are 156 animals and 1,850 plants formally proposed for listing as endangered or threatened. Many of these will ultimately have critical habitat designated for them.

The point of all of these figures is that there is some significant likelihood for conflicts under the act. It occurred to the committee that there is a need to develop a mechanism to resolve these conflicts and potential conflicts short of whole-

sale revision of the Endangered Species Act—an option that I am sure very few Members would endorse.

The chairman has already described the exemption process in H.R. 14104 at some length. I will not attempt to recover that ground here. I would like to focus on a couple of significant portions of that exemption process. First, in contrast to the Senate bill, H.R. 14104 would permit the Governor of the affected States, as well as Federal permit and license applicants to apply to the Endangered Species Committee for an exemption. We recognized that section 7 applies to more than just Federal agency actions. It applies to actions "authorized, funded or carried out" by Federal agencies. In many cases, of course, the relevant Federal agency may have little or no interest in the project at issue. The Corps of Engineers, for example, grants thousands of permits each year under section 404 of the Federal Water Pollution Control Act. The corps would apply for an exemption under our bill, but would have little if any interest in doing so. Likewise, the Secretary of Agriculture participates in numerous timber purchasing contracts, but the Secretary has no significant economic interest in these contracts. H.R. 14104 merely gives the timber purchaser, in addition to the Secretary, an opportunity to receive an exemption from the Endangered Species Act.

I want to emphasize that H.R. 14104 only gives the Federal agency, the Governor and the permit and license applicants an opportunity to receive an exemption from the Endangered Species Act. They can apply for an exemption, but they are not guaranteed to receive one. In order to receive an exemption under this bill, the applicant must satisfy a set of stringent criteria.

Most importantly the applicant has to convince the Review Board that they consulted with the Secretary in a good faith attempt to resolve the conflict. Consultation is the key to this process as it is to the entire act. We believe that many endangered species problems can be solved through consultation. An exemption procedure must insure that the Federal agency made a reasonable effort to resolve the issue at the consultation stage without resorting to the full exemption procedure.

If the Review Board determines that consultation was carried out in good faith, they can proceed to consider the merits of any exemption. To a large extent, the Review Board is acting as the hearing examiner for the Endangered Species Committee. We recognized that it will be exceedingly difficult to get the cabinet level committee members to devote a substantial amount of personal time to the collection of evidence on the merits of any exemption. Under the terms of H.R. 14104 the Review Board will do most of the work for them. The Review Board will conduct the formal adjudicatory hearing, evaluate the evidence presented during the hearing, and make a recommendation to the Endangered Species Committee. The committee will be expected to make its decision on the basis of the Board's recommenda-

tion as well as the evidence presented during the formal hearing.

At first blush, the procedure proposed in H.R. 14104 appears to be very long and complex. In fact, every effort has been made to streamline this process. We recognized that inordinate delays in the construction of projects can be devastating to them.

Thus, every stage of the procedure in H.R. 14104 has a time limitation associated with it. The limitations will insure the expeditious resolution of any exemptions to be impacted by a critical habitat a limitation on the period of consultation. This bill requires the Secretary to issue his biological opinion within 90 days or within a time that is mutually agreeable to the Secretary and the Federal agency involved. Second, once an application for an exemption is presented to the Review Board, the Board would have only 60 days to decide whether the agency satisfied the consultation requirements of the act. If the agency had consulted properly, the Review Board would proceed to conduct a formal hearing and make a recommendation to the Endangered Species Committee. This recommendation would have to be issued within 180 days of the initiation of the hearing. Finally, the committee would have 90 days to decide whether or not to grant the exemption.

The exemption procedure is an important part of this legislation, but it is far from the only part. The bill includes a number of other provisions which will serve to improve the administration of the act.

Most significantly, the bill includes a number of provisions which are intended to improve the notice procedures in the act and insure that those communities to be impacted by a critical habitat proposal will have a chance to comment effectively on it. Unfortunately, the current notice and hearing procedures in the act have not sufficiently accommodated the interests of individuals outside of Washington, D.C.

Currently, proposals to list species or designate critical habitat are published in the FEDERAL REGISTER alone. Not surprisingly, many listings and designations are proposed and finalized without anyone knowing it. H.R. 14104 corrects this deficiency by requiring actual notice to all units of local government. It also requires proposals to designate critical habitat to be published in newspapers of general circulation in the vicinity of the proposed habitat. Finally, the bill mandates hearings on critical habitat proposals in the vicinity of the proposed habitat.

We believe that all of these requirements will enhance rather than detract from the endangered species program. All too often, those people that know the most about a species, or are more likely to perform an activity that is detrimental to the species, are the last ones to be consulted by the Washington bureaucracy. Certainly it is in everybody's interest for conflicts between species and development activities to be discovered and resolved at the earliest opportunity. These provisions will insure that this is the case.

The Endangered Species Act has been criticized because it allows for no consideration of the economic impact of listing a species or designating critical habitat. Although H.R. 14104 retains the act's stringent mandate, it does introduce a consideration of economic impacts in several respects. First, the consideration of economics is central to the exemption process. The Endangered Species Committee must determine whether the benefits of the agency action—including economic benefits—outweigh the benefits of alternatives which would conserve the species. Second, the bill includes a provision which requires the Secretary to evaluate the economic impact of designating critical habitat for invertebrate species. This provision authorizes the Secretary to alter the designation of critical habitat for these species if he determines that the benefits associated with excluding the habitat outweighs the benefits associated with the designation.

The ultimate goal of the Endangered Species Act is the conservation of the ecosystem on which all species, whether endangered or not, depend for survival. For this reason the Endangered Species Act protects all endangered and threatened members of the animal kingdom, not merely the so-called higher forms of life. Nevertheless, we recognized that the large number of invertebrate species could ultimately present serious conflicts with many Federal activities. This provision will continue full protection for all listed species, but will give the Secretary some much needed discretion in the designation of critical habitat.

H.R. 14104 includes a number of other provisions which will serve to improve the administration of the Endangered Species Act. The bill requires the Secretary to review the list every 5 years to determine if any species should be removed from the list. It also requires the Secretary to act on any regulatory proposal within 2 years. These two provisions are intended to make sure that the endangered species list is kept up to date and that the decision whether or not to list a species is made within a reasonable period of time.

● Mr. LEHMAN. Mr. Chairman, the Endangered Species Act, enacted in 1973 has worked well, and there is no real need to amend this legislation. The Merchant Marine and Fisheries Committee, in an effort to address the criticism that this act is inflexible, has nevertheless reported out a compromise bill, H.R. 14104. As with any compromise legislation, this bill contains both positive and negative features, but I support its passage.

I am especially concerned about allowing the Secretary of the Interior to consider the economic impact of declaring a critical habitat for invertebrates, a procedure not required when declaring critical habitats for vertebrates. On the positive side, however, this bill includes requirements for recovery plans for all listed species, improved notice procedures for proposed listings and habitat designations and biological assessments before action begins on projects where endangered species are present.

All plants and animals have real, and

in some cases still undiscovered, value for us. They are a source of food, and have already proven their value in medical research. They have set alarms for us, alerting us to the dangers of DDT. Many common weeds are already being tested as possible energy sources. Since all species are interdependent, it is impossible to determine the impact that the destruction of one could have on the balance of nature and thus our society.

The Endangered Species Act has been the backbone of our country's struggle to protect threatened or endangered wildlife from extinction. I therefore urge that the compromise committee version of H.R. 14104 be passed by the House, without any further weakening amendments.

Mr. BOWEN. Mr. Chairman, I believe I have no further requests for time on this side.

I would simply ask the committee to proceed with the business at hand which is considering some very significant amendments which I think can improve this bill.

I want to remind the members of the committee that we have an agreement that at any point at which a recorded vote would occur that the committee will have to rise. So it is our hope that we can dispose of a few noncontroversial amendments so that we may conduct as much business of the committee as we can during this period of the day.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Endangered Species Act Amendments of 1978".

Sec. 2. Section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) is amended—

(1) by adding at the end of subsection (a)(1) the following new sentence: "At the time any such regulation is proposed, the Secretary shall also by regulation, to the maximum extent prudent, specify any habitat of such species which is then considered to be critical habitat. The requirement of the preceding sentence shall not apply with respect to any species which was listed prior to enactment of the Endangered Species Act Amendments of 1978.";

(2) by adding at the end of subsection (b) the following new paragraph:

"(4) In determining the critical habitat of any endangered or threatened invertebrate animal species, the Secretary shall consider the economic impact, and any other relevant impacts, or specifying any particular area as critical habitat, and he may exclude any such area from the critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying the area as part of the critical habitat."

(3) by amending subsection (c)(1) by striking out "and shall", and by inserting immediately before the period the following: ", and specify any critical habitat within such range";

(4) by amending subsection (f)—

(A) by amending paragraph (2) (A) to read as follows:

"(2) (A) In the case of any regulation proposed by the Secretary to carry out the purposes of this section with respect to the determination and listing of endangered or threatened species and their critical habitats in any State (other than regulations to implement the Convention), the Secretary—

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 transplantation 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 Hiawassee. 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
Annuizio	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. Jones, Tenn.
Duncan, Tenn. Kasten
Edwards, Ala. Kazen
Edwards, Okla. Kelly
English Kemp
Erlenborn Kindness
Ertel Krueger
Evans, Colo. LaFalce
Evans, Del. Lagomarsino
Evans, Ga. Latta
Evans, Ind. Leach
Fary Lederer
Findley Levitas
Flippo Livingston
Flood Lloyd, Calif.
Flowers Lloyd, Tenn.
Foley Long, La.
Ford, Tenn. Lott
Fountain Luken
Fuqua Lundine
Gammage McCormack
Gaydos McDonald
Gephardt McEwen
Gialmo McKay
Gibbons Mahon
Gilman Marriott
Ginn Martin
Goldwater Mathis
Gonzalez Mattox
Goodling Mazzoli
Gore Michel
Grassley Miller, Ohio
Gudger Mollohan
Guyer Montgomery
Hagedorn Moore
Hall Moorhead, Calif.
Hammer- Moorhead, Pa.
schmidt Murphy, Ill.
Hanley Murtha
Hansen Myers, John
Harrington Natcher
Harsha Nix
Hefner O'Brien
Heftel Oberstar
Hightower Perkins
Hillis Pickle
Holland Poage
Holt Pressler
Horton Preyer
Hubbard Price
Huckaby Quayle
Hyde Quillen
Jacobs Rahall
Jenkins Railsback
Jenrette Regula
Johnson, Calif. Rhodes
Johnson, Colo. Risenhoover
Jones, N.C. Roberts
Jones, Okla.

NOES—157

Akaka Elberg
Ambro Emery
Ashley Fawcett
Aspin Fenwick
AuCoin Fish
Bafalis Fisher
Baldus Pithian
Baucus Florio
Beard, R.I. Ford, Mich.
Bedell Forsythe
Beilenson Fowler
Blagel Fraser
Bingham Frenzel
Blanchard Glickman
Blouin Gradison
Boland Green
Bonior Hamilton
Bonker Hannaford
Brademas Harkin
Brodehead Harris
Brown, Calif. Hawkins
Brown, Mich. Hollenbeck
Burke, Mass. Holtzman
Burton, John Howard
Burton, Phillip Hughes
Carr Jeffords
Cavanaugh Jordan
Clay Kastenmeier
Conte Keys
Conyers Kildee
Corcoran Kostmayer
Corman Krebs
Cornell Leggett
Danielson Lent
Davis Long, Md.
Dellums McClory
Derrick McCloskey
Dingell McDade
Dodd McHugh
Downey McKinney
Drinan Madigan
Early Maguire
Eckhardt Mann
Edgar Markey
Edwards, Calif. Marks

Stark Udall
Steers Van Deeren
Steiger Vanik
Stokes Vento
Stratton Walgren
Studds Waxman
Traxler Weaver
Tsongas Weiss

NOT VOTING—42

Ammerman Garcia
Applegate Heckler
Armstrong Ichord
Badham Ireland
Burke, Calif. Le Fante
Burke, Fla. Lehman
Carney Lujan
Chisholm McFall
Cohen Marienue
Crane Meeds
Dickinson Mikva
Diggs Milford
Flynt Mitchell, Md.
Frey Moss

Murphy, N.Y.
Myers, Michael
Neal
Nichols
Oakar
Pettis
Pursell
Quie
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 gentlewoman 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 gentlewoman yield?

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

Mr. MAGUIRE. Mr. Chairman, I thank the gentlewoman 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 gentlewoman from New Jersey in closing what really

this act signed to protect us in the future. Then the commitment of the committee I think is on the right side, and I fully support it from the right side. I think we will take a very good look in the Congress ahead so as to find what necessary changes are needed as a result of this further action which will not be officially announced until about February of next year. And, realizing that even a 1-year review, in truth, is only 2½ months in its committees, about March 1, to the cutoff of the authorization of reported bills of May 15.

Mr. Chairman, I do think we have an agreement that I hope will be broadly accepted, and that we will extend for 2 years, or 18 months, which will give the Congress the opportunity to review whatever other problems there are. We all know the horror stories that have been mentioned, and they are

frankly believe that this bill, because of the real attention to the consultation process, which were well spelled out by my colleague, the gentleman from Mississippi (Mr. Bowen) are the real secret of the usefulness of this legislation.

It does have the exemption procedure. I think most of the problems have begun because of the lack of really extensive communications and hearings. It gives opportunity for people to get at the problems early on, which could have prevented many of the stories that we have heard about and we all know about. I want to prevent this kind of thing as much as anybody else, but I do think it is essential that we do complete the function here today.

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

Mr. FORSYTHE. Mr. Chairman, I would such time as he may consume to the gentleman from Tennessee (Mr. Bowen).

Mr. BEARD of Tennessee. Mr. Chairman, it is my impression that the entire membership is aware that the Endangered Species Act is seriously flawed and in need of amendment. Although the intent of this act is frequently characterized by reference to the problems surrounding the Tellico Dam and the dam darter, it seems that every day since that decision I have heard a different member call to my attention the occurrence of similar problems in his own district. Although the Tellico Dam is not in my district, the Duck River Dam in my district faces a similar threat.

Mr. Chairman, I had intended to offer a complete substitute to this bill. However, last week I received a briefing from the General Accounting Office which put a different light on this subject.

Briefly stated, the GAO is conducting a self-initiated study of the effectiveness of this act. Although a final report will not be available until February, all their field work has been concluded.

Mr. Chairman, preliminary findings over 6 months ago revealed so many management deficiencies in the Fish and Wildlife Service that GAO was not able to brief the committee before oversight hearings were held. GAO proceeded to

spend more than 500 staff days constructing an audit.

The major result of that work indicates that the procedures used in listing new endangered species are so ineffective and inefficient that they entirely destroy the integrity of this act. This finding is critical, given that all efforts toward drafting amendments to the act to date, including those in H.R. 14104, have centered on section 7, concerning "interagency cooperation." It now seems clear that neither H.R. 14104 nor the substitute bill which I had intended to introduce to amend this act would solve the problems this committee faces.

Regarding the current Fish and Wildlife Service listing procedure, GAO has found that no official priority exists on the listings. The ones which do exist are based entirely on the whim of service biologists.

Additionally, some species have been kept off the list apparently under political pressure. This selective approach to administering the law has allowed the New Malones Lake project to approach completion, even though a species of harvestman "daddy long-legs" was discovered behind the dam then under construction. It is interesting to note that the Fish and Wildlife Service compiled more evidence indicating that this should be listed as endangered, more so than any other species ever listed. Even so, this arthropod has yet to be listed. New Malones Lake is a \$500 million project near Sacramento with an impressive 1.7 to 1 benefit-cost ratio.

GAO also has found that the Fish and Wildlife Service is causing unnecessary cost and disruption to construction projects because of the inefficient way in which the list of proposed new listings is managed.

Many species are proposed to be classified as "threatened" or "endangered" and remain in that status indefinitely. Once a species is proposed for the list, Federal agencies with potential conflicts are rightfully reluctant to begin new projects which may be adversely impacted, or to ask for full funding for projects already begun. In essence, the Fish and Wildlife Service proposes new listings, but fails to follow through. Status reports are never even written up on the species.

In contrast to this situation, Fish and Wildlife is actively considering listing species which are not even threatened or endangered. Again, because of failure to conduct scientific assessments, Fish and Wildlife is purchasing what they suspect to be "critical habitat" for species which have fully recovered from prior threats of extinction. In one such instance, Fish and Wildlife planned to purchase a pond in Hawaii for \$6.4 million until the GAO stopped them as a result of their study.

Finally, GAO has found 5,200 "consultations" which Fish and Wildlife offered as proof that the act is working, cannot be documented. Most of these consultations, at least in many cases, were merely telephone calls. In many instances a dozen of them were placed to the same agency, regarding the same project.

Mr. Chairman, because I believe that

Congress should have the opportunity to amend the act next year to reflect GAO's final report, I have asked for and received assurances from Chairman MURPHY that a committee amendment will be offered or that they will accept my amendment to reauthorize this act only for 1½ years instead of 3 years, as called for by H.R. 14104.

I believe that with the adoption of the amendments which reflect GAO's concerns as expressed to me last week, together with the limited number of perfecting amendments, we will have a bill which should be satisfactory to all parties who have been vocal on these issues. I still believe that it would be wise to review the law next year and a year and a half from now, but any changes at that time probably should amount to no more than fine-tuning.

Mr. Chairman, this bill, as modified by my amendments and others, will constitute a long-overdue reform of the Endangered Species Act.

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

Mr. BEARD of Tennessee. I yield to the gentleman from Tennessee.

Mr. DUNCAN of Tennessee. Mr. Chairman, it is my understanding that the review process the gentleman would set up will take a year or a year and a half. Would the gentleman agree?

Mr. BEARD of Tennessee. It possibly could take approximately 2 years from now for a project.

Mr. DUNCAN of Tennessee. Yes.

Mr. BEARD of Tennessee. The new review process can be quicker than that.

Mr. DUNCAN of Tennessee. Would the gentleman say 2 years, or, at a very minimum, 1 year?

Mr. BEARD of Tennessee. It could be a minimum of 1 year; the gentleman is correct.

Mr. DUNCAN of Tennessee. I thank the gentleman.

Mr. BEARD of Tennessee. Mr. Chairman, I would like to say and I would like to emphasize what my colleague, the gentleman from Mississippi (Mr. Bowen), has pointed out. The reason I have somewhat changed my attitude, as it was pointed out last night, if the act remains unchanged as it has been for the past 3 years, we will not have any opportunity to review projects such as Tellico Dam or any other projects in other Members' districts.

At least, now we will have a format from which to try to conduct hearings and to try to exempt some of these projects. I do not say the bill is perfect, but I do feel that it is a much better bill than the one we have lived with for the past 3 years. I think the important thing that will have to be taken into consideration is with the completion of the GAO report consisting of 500 staff days of work this January the committee will have the opportunity to look at the GAO study and refine the bill even more next year. So I would urge that the Members of this House give us at least an opportunity to start trying to correct some of the problems that we have had to live with these past 3 years.

Mr. BOWEN. Mr. Chairman, I yield 3 minutes to the gentleman from Oregon (Mr. AuCOIN).

Mr. AuCOIN. I appreciate the gentleman's yielding.

Mr. Chairman, I ask for this time to engage in a colloquy with the gentleman from Mississippi, the manager of the bill.

The report states on page 23 that there should be an evaluation of the nature as well as the scope of the project in the determination of whether an action is nationally or regionally significant. This language is extremely important in many western communities where there is extensive Federal land ownership, especially national forests. The concern of many of these timber-dependent communities is that while an individual Federal timber sale may not cover a large geographical area, the elimination of that sale would have an effect on a much larger area. In effect, it would reduce the timber inventory, thus decreasing the allowable harvest from the area. This, in turn, would impact many more communities in the region and, thus, could be of regional significance.

I would ask the gentleman from Mississippi if the committee feels this type of situation should receive consideration in line with the intent of the language in the conference report.

Mr. BOWEN. If the gentleman will yield, it would be my feeling that the gentleman is absolutely correct. Just as our good friends in the environmental movement have pointed out that a chain of life of vast importance may begin in one small spot with one small group of creatures, by the same token, I think a chain of economic development of vast importance to the country can be linked in the same manner. It is very clear in the committee report that the concept of regional impact does not mean multi-state and, in fact, one of the examples used in the committee report is, I believe, the port of Sacramento, one limited area of economic development. I think we can identify a great many projects, whether they be waterways, whether they be dams, whether they be highways, whether they be forests, that can be identified as having an impact that it could clearly be considered regional. It is our firm intent that this legislation be interpreted in the direction of consideration of regional impact as meaning one narrow geographic range, and that by putting this language in, by putting the regional language in, we are trying to get away from the idea that we have got to demonstrate a broad national impact. "Regional" is to be interpreted clearly, in my opinion, as meaning a relatively limited area which could impact substantially upon lives and prosperity in the region affected.

Mr. AuCOIN. I thank the gentleman. I know the committee is concerned that consideration also be given to the cumulative impact that multiwithdrawals of land from the timber base would have on national wood supply and price and economic dynamics that go along with that. I would ask the gentleman if he feels that the intent of the committee's language in the conference report on page 23 dealing with regional impact would cover that set of circumstances.

The CHAIRMAN. The time of the gentleman has expired.

Mr. BOWEN. I yield 1 additional minute to the gentleman from Oregon.

I would agree that it does. It is my very clear and firm opinion that such withdrawals of timberland would in the aggregate have a regional impact.

Mr. AuCOIN. I appreciate the gentleman's response.

Mr. BOWEN. Mr. Chairman, at this point I yield 4 minutes to the distinguished gentleman from Michigan (Mr. DINGELL), chairman of the Subcommittee on Fisheries and Wildlife.

Mr. DINGELL. Mr. Chairman, I commend my friend and colleague, the gentleman from Mississippi (Mr. BOWEN), my friend and colleague, the gentleman from New Jersey (Mr. FORSYTHE), and my friend and colleague, the gentleman from Tennessee (Mr. BEARD), for their efforts in achieving this compromise, as well as the gentleman from California (Mr. LEGGETT), and the gentleman from New York (Mr. MURPHY), chairman of the committee, for the very fine work they have done.

Mr. Chairman, when I authored the Endangered Species Act in 1973, my primary objective was protection of all species threatened or potentially threatened by man's development and overdevelopment. Many of you were present for the passage and enactment of this law. Many of you agreed that the protection of our species must be held in the highest priority. That is what the act is all about.

Since the passage of the Endangered Species Act several developments have occurred causing the Act to come under fire. We have witnessed the Tellico Dam case. And, it was the Tellico case that helped to ignite the major controversy that we are engaged in today. The Fisheries and Wildlife Subcommittee held 8 days of intensive oversight hearings—and, out of these hearings came some rather constructive criticism of how the act is being administered. On the other hand, there were unfounded charges that the foundation of the statute is not good. There is no question that the act is a good act and for the most part it has worked.

Yet, much of the criticism directed against the Endangered Species Act is based on the belief that the act puts the interest of "obscure" species ahead of the interests of man. That belief is erroneous. What the act really puts foremost is the long-term interest of human welfare—and the necessity that mankind is entitled to a habitable environment. This necessitates having a diverse pool of genetic resources to tap for medical, scientific, economic and other purposes. What the act makes secondary to that goal is the realization of short-term, shortsighted, and single-purpose goals that can only be accomplished by destroying the very life forms that could someday be of enormous benefit to mankind.

In 1973, I felt that this ordering of priorities was right. Today, I continue to feel that it is right. Those of you who ridicule the numerous so-called obscure

species whose names sound so foreign fail to realize that some of these little-known species provide you and me with penicillin and a host of other crucial drugs; some of these species helped with the development of radar in World War II; other species provide the active ingredients for almost one-half of all medical prescriptions in the United States, and other substances which may someday unlock countless other mysteries of medicine and science.

I continue to feel the intentional obliteration of a unique life form is a matter of the utmost gravity and that we ought not to allow it—absent the most compelling and persuasive justification. The bill that we are considering today represents a qualification of the mandatory duties prescribed by the 1973 act. That qualification is carefully limited, however, so that the destruction of species will not be allowed except when there are no other alternatives to the accomplishment of some meritorious and necessary development action. The bill we consider here will also not allow the destruction of any species unless and until the consultation process has been given every opportunity to work.

In drafting this bill, we were mindful that the act's existing consultation process has been very successful in revolving potential conflicts that have arisen between endangered or threatened species and Federal projects. The Merchant Marine and Fisheries Committee did not intend to in any way limit the jurisdictional parameters of the 1973 act. Accordingly, we took great pains to insure that this consultation process continue to function in the effective manner that it has thus far functioned.

Thus, before a Federal action may be granted an exemption under this bill, it must first be established that the requirements of the consultation process have been carried out fully and in good faith. Further, this bill contains a new requirement designed to insure that the existence of endangered or threatened species in the area of a new Federal project will be identified at the earliest possible time—before construction of the project begins—and, thus, that consultation will have the greatest possible chance to succeed in identifying modifications or alternatives that will avoid adverse effects on endangered or threatened species.

If the consultation process has been exhausted to the fullest extent, this bill provides for a process whereby an exemption from section 7 of the act can be granted. But, it must be pointed out that in conjunction with granting such an exemption, there is a requirement that all reasonable mitigation and enhancement measures be established and that the agency being granted the exemption be required to include the costs of such mitigation and enhancement within the project costs. This procedure for exempted project actions is critical to this legislation. These provisions were included in this bill for the purpose of not only mitigating—or lessening—the adverse impact of an agency action on an endangered or threatened species, or its critical habitat, but in creating a process whereby the status of such species could be "en-

they sent a bill to the House, which was by my understanding in the Senate, even without their knowledge that it had passed; and that how pends in the Committee on Works and Transportation in the House? Is that the gentleman's understanding?

UDALL. Mr. Speaker, will the gentleman yield further?

CHAPPELL. I yield to the gentleman from Arizona.

UDALL. Mr. Speaker, the gentleman is correct. Our Committee on Indian and Insular Affairs does not have jurisdiction over any deauthorization of the Cross-Florida Barge Canal. That is correct.

CHAPPELL. Mr. Speaker, I would like to make the comment that the gentleman now, without any notice to any of the members who represent districts in which the canal lies—and there are four of them—has taken this action. None of us had any notice whatsoever, and this matter is just stuck on a bill in a nongermane way.

UDALL. Mr. Speaker, we want to hold up this bill, because there are worthwhile projects in it. We might have the assurance from the gentleman that he will do everything within his power to knock out the nongermane matter with reference to the Cross-Florida Barge Canal, and that he will do everything in his power, either by the front door, to preserve the orderly procedure of having this matter considered by the appropriate committee and then through the back door, then I would be willing to withdraw my reservation.

UDALL. Mr. Speaker, let me say to the gentleman from Florida (Mr. BOWEN), whom I greatly admire, and say also to the gentleman from Mississippi (Mr. BOWEN), who I think is one of the great people in the history of this Nation, that I understand their position. I think they should have been consulted and I think this is an irregular procedure.

UDALL. I personally think we ought to deauthorize this canal one of these days, and it should be for it at the proper time and in the regular procedure.

UDALL. I do not pretend to control the other side, and I do not pretend to control the other body, but I will tell the gentleman I will do everything in my power to see that this item is deleted in the conference we have, because I do think it belongs in this bill under the regular procedure.

CHAPPELL. Mr. Speaker, with my understanding, I withdraw my reservation of objection.

SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

ASHBROOK. Mr. Speaker, reserving the right to object, as I understand it, the basic bill provides for the extension of the Pennsylvania Avenue Development Corporation?

UDALL. Mr. Speaker, if the

gentleman will yield, it is an authorization bill. The authorization ran out. We started out with a simple bill to extend the authorization of the Pennsylvania Avenue Development Corporation.

Mr. ASHBROOK. Mr. Speaker, I think my colleague, the gentleman from Arizona (Mr. UDALL) has hit the nail on the head. We did start out with a simple little bill, and now it is going on and on and on.

I must say that I have to view this bill as one of the major business subsidies of our time. I have watched some of these business types as they operated this particular corporation. The gentleman may recall that I objected to the original consideration of the Pennsylvania Avenue Development Corporation bill some time ago, and I would be constrained to object at this time if the objection would have the purpose of killing the Pennsylvania Avenue Development Corporation.

Mr. UDALL. Mr. Speaker, we are trying to work out the gentleman's concern, and I hope the gentleman will not kill the whole bill.

The gentleman from Texas (Mr. KAZEN) has been working here almost continuously for the past 48 hours and he has an important rider on this bill that he is trying to get passed. Also involved in the bill is the Indiana Dunes National Lake Shore extension, in which the Indian delegation is greatly interested.

Mr. ASHBROOK. Mr. Speaker, I would still be constrained to object until we have a little better understanding of this matter.

Mr. Speaker, I object.

The SPEAKER pro tempore (Mr. MURTHA). Objection is heard.

ENDANGERED SPECIES ACT AMENDMENTS OF 1978

Mr. BOWEN. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 14104) to authorize appropriations to carry out the Endangered Species Act of 1973 through fiscal year 1981, and for other purposes.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Mississippi (Mr. BOWEN).

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill H.R. 14104, with Mr. SISK in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the first reading of the bill is dispensed with.

The gentleman from Mississippi (Mr. BOWEN) will be recognized for 30 minutes, and the gentleman from New Jersey (Mr. FORSYTHE) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Mississippi (Mr. BOWEN).

Mr. BOWEN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I would like to com-

ment briefly at this point that we have a statute which we have lived with since 1973. It was an attempt to balance environmental and developmental interests. I, frankly, am of the opinion that it has not been successful in that regard, and I think most of the Members of this House agree. For that reason, we have rewritten that legislation this year, and we have made a diligent effort to take into consideration more accurately the development needs of this Nation.

There are a number of things which this bill brings before the House which I think are substantial contributions in that direction. I guess it is often said that compromise is the soul of politics. And if that is true, certainly this bill has a great deal of soul, because it is very decidedly a compromise among a number of factors and forces. I would like to thank those representatives of what we might oversimplify by calling the environmental movement in the Nation, who have worked with us and tried to develop this bill, and, at the same time, those who represent the developmental interests of this country who have worked with Members and committee staff in order to devise a bill which does protect and preserve the endangered species of this Nation and at the same time provides an opportunity for human growth, development, and progress, which we feel is an absolutely vital consideration.

A number of questions which were raised last night during consideration of the rule were particularly directed in the area of what the bill does to insure that there can be economic growth and development in the country. I would like to direct my remarks in that direction. I know there will be others who will address other aspects of this legislation.

For the first time, we are going to have a bill which will provide actual notice to all local units of government. For the first time we are going to have a bill which will provide for publication of proposed listings. For the first time we are going to have mandatory public meetings and hearings. For the first time we are going to have current designation of critical habitat at the same time as the listings.

For the first time we are going to have proposed final regulations actually based on the best scientific data available—current, not old data, but current data. I might indicate that the gentleman from Texas (Mr. BROOKS), who is not in the Chamber at this time, asked a question about the Houston toad. That is a good example of the mistakes and, frankly, what I must consider the ineptitude we have seen from time to time on the part of many of the officials of the Office of Endangered Species. They did designate as the habitat of the Houston toad a paved parking lot in downtown Houston. When it was brought to their attention, they then discovered that their maps and research data were somewhat out of date. So, this legislation obviously goes to correct that kind of problem.

We have, of course, for the first time the all-important exemption process. There is no exemption process under present statute law—none at all. I recall

For this and other reasons, most utilities and most of those who are involved in producing electrical energy have concluded that the economic problems and costs alone are so great that nuclear power is not competitive with other modes of power generation.

Mr. Chairman, while the Three Mile Island incident is still fresh in our consciousness, the Subcommittee on Appropriations and then the Committee on Appropriations on this matter has reported a measure which provides \$719,955,000 for the further development of nuclear fission. Of that, perhaps \$187 million is justifiable because it deals with waste management and spent fuel storage.

For the rest, what this committee is saying and what the House will be saying if we vote for this measure is that regardless of the inherent danger of nuclear power, not just to ourselves, not just to our children who are alive, but countless generations to come, running into the tens of thousands of years, we are going ahead full speed, the devil take the hindmost.

I have heard people talk about how nuclear power is no more dangerous than coal. That just happens not to be true and the people who make those statements know it is not true, because what nuclear power does that coal does not do is to take the generations upon generations in the future and subject them to genetic damage, which coal does not do.

It seems to me that the American people have the right to expect that their Congress, the people whom they have elected to office, demonstrate as much concern as they themselves have about their future.

The CHAIRMAN. The time of the gentleman from New York (Mr. Weiss) has expired.

(By unanimous consent, Mr. Weiss was allowed to proceed for 2 additional minutes.)

Mr. WEISS. Mr. Chairman, I think the people of this country are being badly served by us. I think we have so brainwashed ourselves and have allowed ourselves to be so brainwashed by the nuclear advocates that we do not care any more whether the facts prove that nuclear power is worthless and worse than worthless, harmful to us as a Nation.

It seems to me that if we really were concerned about the facts, we would recognize that Three Mile Island was a warning. We have no guarantee that the next time we will not have a melt down.

Someone said perhaps if we lost Harrisburg, if we lost Detroit, maybe this House would wake up. I hope it does not take that.

The CHAIRMAN. The Clerk will read. The Clerk read as follows:

TENNESSEE VALLEY AUTHORITY
PAYMENT TO TENNESSEE VALLEY AUTHORITY
FUND

For the purpose of carrying out the provisions of the Tennessee Valley Authority Act of 1933, as amended (16 U.S.C. ch. 12A), including purchase, hire, maintenance, and operation of aircraft, and purchase and hire

of passenger motor vehicles \$146,177,000, to remain available until expended.

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: On page 28, line 18, strike the period and insert: "Provided, That notwithstanding the provisions of 16 U.S.C. chapter 35 or any other law, the Corporation is authorized and directed to complete construction, operate and maintain the Tellico Dam and Reservoir project for navigation, flood control, electric power generation and other purposes, including the maintenance of a normal summer reservoir pool of 813 feet above sea level."

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 wish to offer this amendment to the bill now before us. The purpose of my amendment is to establish in law the Congress desire to see that the Tellico Dam and Reservoir is completed and used as designed. It does not call for additional funds in this for the TVA.

My amendment would provide in legislation, what we in the Congress intend as far as the status of the project is concerned. The project is 99 percent complete, and over \$100 million has previously been appropriated by the Congress and spent on the project. My amendment would make it clear that the Congress intends for this project to be 100 percent complete and used as designed.

Mr. MYERS of Indiana. Mr. Chairman, if the gentleman will yield, the minority has reviewed the amendment and accepts it.

Mr. BEVILL. Mr. Chairman, if the gentleman will yield further, we have no objection to the amendment.

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

The amendment was agreed to.

The CHAIRMAN. The Clerk will read. The Clerk read as follows:

WATER RESOURCES COUNCIL
WATER RESOURCES PLANNING

For the Water Resources Council for expenses necessary in carrying out the provisions of the Water Resources Planning Act of 1965 (42 U.S.C. 1962d-3), as amended, including services as authorized by 5 U.S.C. 3109 and 42 U.S.C. 1962a-4(5), and hire of passenger motor vehicles (42 U.S.C. 1962a-4(6)), \$37,556,000, including \$4,330,000, for expenses in administering the Act (42 U.S.C. 1962d(b)), \$3,112,000 for preparation of assessments and plans (42 U.S.C. 1962d(c)), \$580,000 for preparation of plans (33 U.S.C. 1289), \$3,134,000 for expenses of river basin commissions under title II of the Act (42 U.S.C. 1962d(a)), \$21,000,000 for grants to States under title III of the Act (42 U.S.C. 1962c(a)), and \$5,400,000 for Upper Mississippi Comprehensive Management Plan (42 U.S.C. b-3).

□ 1610

AMENDMENT OFFERED BY MR. ROBERTS

Mr. ROBERTS. Mr. Chairman, I offer an amendment.

The Clerk will read as follows:

Amendment offered by Mr. ROBERTS: Page 29, after the period on line 9, insert the following new sentence: "None of the funds appropriated under this paragraph may be expended by the Water Resources Council for the review of—

"(1) any preauthorization report or proposal, or

"(2) any preconstruction plan.

for a Federal or federally assisted water resources project or program or a related land resources project or program unless funds for these purposes are authorized to be appropriated by Congress in a statute enacted after the date of enactment of this Act."

Mr. ROBERTS (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 Texas?

There was no objection.

Mr. ROBERTS. Mr. Chairman, I have an amendment at the desk numbered 3. This amendment provides that none of the funds appropriated for the Water Resources Council may be expended by the Council for the review of any preauthorization report or proposal or any preconstruction plan for a Federal or federally assisted water resources or related land resources plan or program unless funds for such review are authorized to be appropriated by Congress in a statute enacted after the date of enactment of this appropriations bill. Our committee is presently considering H.R. 2610, a bill to authorize the Water Resources Council for fiscal year 1980. I feel that it is necessary that Congress have an opportunity to consider this legislation and pass on it prior to the implementation of a new review function by the council. I therefore urge adoption of the amendment.

Mr. MYERS of Indiana. Mr. Chairman, will the gentleman yield?

Mr. ROBERTS. I yield to the gentleman from Indiana.

Mr. MYERS of Indiana. Mr. Chairman, the minority has reviewed this amendment, and we accept the amendment.

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

Mr. ROBERTS. I yield to the chairman of the committee.

Mr. BEVILL. Mr. Chairman, we accept the amendment as is and have no objection to it. Certainly until the gentleman's committee has had time to act on it, the funds should not be expended.

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

Mr. ROBERTS. I yield to the gentleman from Oregon.

Mr. WEAVER. Mr. Chairman, would the gentleman state what the amendment is again, please?

Mr. ROBERTS. Mr. Chairman, let me read the amendment for the benefit of the gentleman.

June 1978 - Supreme Ct rules for the
snail darter.

Oct 14, 1978 - Duncan amendment to
reauthorization of
Endangered Species Act
"to exempt ~~from~~ Tellico Dam
from provisions ~~of~~ the Act"

Duncan wins 231-157.
AG votes yes.

Oct 14, 1978 - Final passage of Endangered
Species Act reauthorization
which includes creation
of GSD committee.

Bill passes 384-12.
Gore votes yes.

Appropriations - 1979

June 18, 1979 Duncan amendment

"exempts Tellico dam from any law that might hinder construction."

x Adopted on voice vote

x Final passage of bill - 359/29

Senate does not include similar language
Conferees cannot agree on language.

Conference report back to House, w/
language as pt. of disagreement.

House puts language back in after Conference. Breayx
raises pt of order

Aug 1, 1979 - Breayx Amendment

x Raises pt of order - language
re: Tellico Dam is legislation
on an appropriations bill.

x Pt. of order rejected 156/258.

Gore votes against the pt. of order
(which is a vote for the dam.)

Senate ultimately accepts Duncan language.

President considers veto

Sasser sends letter urging him not to
veto. (Not known if any other
letters sent or if Gore
signed Sasser letter.)

President signs.

The House on Sept. 18 had approved \$279.6 million for the canal for a six month period because the appropriations bill was taken up before Congress cleared the implementing legislation for the Panama Canal treaties.

The Senate on Nov. 1 included a provision appropriating \$40 million for an emergency fund and for payments for expenses incurred before the Oct. 1, 1979, effective date of the treaties.

House members contended that the implementing legislation prevented the appropriation of more money for the canal than was collected by toll revenues, as estimated by the defense secretary and certified by the comptroller general. The estimate for fiscal 1980 was \$463,887,000, the figure the House insisted upon.

House members said that during debate on the implementing legislation, the provision was cited as assurance that American taxpayers would not have to pay for the operation of the canal and said the House would not approve a higher appropriation.

Senate conferees had argued, with support from the State and Defense departments, that the implementing legislation did not preclude the one-time appropriation for the emergency fund. Any payments from the emergency fund, they said, would be reimbursed by toll charges.

There were a number of differences other than the Panama Canal but those were solved with less difficulty.

They included:

- **Amtrak.** The final bill appropriated \$873.4 million for Amtrak, a compromise between the Senate provision of \$899.7 million and the House provision of \$812.3 million. Conferees said Congress would consider a supplemental request. The House appropriation was made before the two chambers agreed to retain some trains scheduled for elimination.

- **Directed Rail Service.** The ICC was allocated \$76 million for directed rail service. The Senate had appropriated \$100 million because of concerns about the bankrupt Milwaukee and Rock Island railroads, while the House had provided \$36 million.

- **Advance Appropriations.** Agreed to strike provisions for advance appropriations for fiscal 1981.

- **Airbags.** Conferees compromised on language from the 1978 appropriations legislation which didn't restrict funds for enforcing the future motor vehicle air bag regulation. But they also added language requiring all tests be fairly conducted and evaluated.

- **Trucking Deregulation.** The House agreed to Senate language directing the ICC not to implement any final rules on deregulating the trucking industry until after Congress considered new legislation on the subject. ■

Public Works, Energy Development Funds

A reluctant President Carter signed into law Sept. 25 a bill (HR 4388 — PL 96-69) that allowed completion of the controversial Tellico Dam in Tennessee. The provision was a rider on the fiscal 1980 public works and energy development appropriations bill.

Nearly a decade had passed since the first concrete was poured for the dam. Opponents of the project had taken their case all the way to the Supreme Court, which had agreed with them. A special board had concurred, deciding that a rare and endangered species of minnow called the snail darter should prevail instead of the dam.

But Congress insisted on finishing the project.

President Carter, who had opposed completion of the Tennessee Valley Authority dam, considered vetoing the \$10.8 billion appropriations bill. He ended up signing it only two hours before it would have become law without his signature.

Saying he acted "with regret," Carter explained, "I believe that avoiding a divisive veto battle will help focus congressional efforts on priority concerns."

Also included in the final bill were fiscal 1980 funds for the Hart Senate Office Building, an item that had been tacked onto the bill by the Senate. HR 4388, which appropriated funds for flood control and navigation improvement projects and energy research and development, also included \$52.6 million for continuing construction on the multimillion-dollar building. (*Hart office building*, p. 227)

Approval of those funds was a major victory for the Senate, which in 1978 had appropriated money for the building by a comfortable margin. But in a rare violation of the spirit of comity between the two chambers, the House that year rejected the appropriation by a big vote, 133-245. (*1978 Almanac* p. 71)

In addition to Tellico dam, the final version of the legislation differed from Carter's requests in several other areas. The measure included:

- Funding for nine new water projects not requested by the president. Final environmental impact statements had not been completed for seven of the nine.

- Only fiscal 1980 funding for water projects, instead of the full funding that Carter sought in order to show the full costs of projects.

- No funding for an independent review by the Water Resources Council of water projects proposed by the Army Corps of Engineers and the Interior Department's Bureau of Reclamation, the government's two major construction agencies.

Although the Senate Appropriations Committee had recommended funds for two flood control projects revived from Carter's 1977 water project "hit list," the full Senate deleted the funds. The president had vetoed the fiscal 1979 appropriations bill because it funded several projects that he wanted killed. Carter threatened another veto if funds for the two projects were in the final legislation. (*Hit list*, 1977 *Almanac* p. 650; fiscal 1979 appropriations, 1978 *Almanac* p. 154)

The bill did not include any funds for construction of the nuclear breeder reactor at Clinch River, Tenn. Authorization for the controversial facility had not been completed. A majority of the House supported the reactor but the president and a majority of the Senate opposed it.

Veto Considered

Carter's decision not to veto the bill apparently stemmed from both political and policy considerations. The president had been advised by congressional leaders that a

veto of the appropriations bill would cost him votes in other areas, such as establishment of a department of education. House Majority Leader Jim Wright, D-Texas, was among those warning the president against a veto.

"I told him that if he did that it would just add fuel to the fire, and he probably wouldn't get anything else out of Congress," Wright said.

Endangered Species Act

Administration officials also were concerned that the veto would strengthen attempts to weaken the Endangered Species Act (PL 93-205), the law that protected the snail darter and thus prevented construction of the dam. The Senate had already voted to reauthorize the endangered species law but the House had not yet acted.

Stuart E. Eizenstat, Carter's domestic policy chief, said the administration was afraid the veto would result in the reauthorization being "chopped to ribbons with amendments exempting a whole variety of projects and species."

"There was real concern that we would win the Tellico battle and lose the Endangered Species Act war," he said.

At least one proponent of the dam, Sen. Jim Sasser, D-Tenn., wrote Carter urging him to sign the funding measure. In a Sept. 11 letter to the president, Sasser reviewed many of the arguments proponents used to win congressional approval of the project, and added, "The Tellico Dam may well be the spearhead for a new economic boom in that area of East Tennessee where new industry and new jobs are desperately needed."

Environmentalists Upset

Environmental organizations that had been strong Carter supporters were so upset by Carter's decision not to veto the bill that they cooled what had been active political support for the president.

Brent Blackwelder of the Environmental Policy Center, who worked for years on water policy issues, said Carter "had a chance to show leadership and he blew it."

Ted Snyder, president of the Sierra Club, sent Carter a critical telegram. "Coming after your environmentally damaging decisions on . . . timber cut increases and the energy mobilization board, it is difficult to imagine a decision more calculated to alienate the environmental community, who have been your strongest supporters until now," Snyder said in the telegram.

In addition to objecting to completion of the Tellico Dam, environmentalists opposed the appropriations bill because it did not comply with water policy reforms proposed by Carter in 1978. (*Water policy reforms, 1978 Almanac p. 759*)

Tellico Background

In 1973, landowners along the Little Tennessee River whose property had been condemned for the TVA project found a new ally. David Etnier, a University of Tennessee zoologist, discovered a rare fish, the snail darter, in the river.

The three-inch fish was later placed on the endangered species list, which meant it was entitled to protection from government actions by the Endangered Species Act.

Opponents of the dam, who had exhausted other legal means of stopping the project, filed a lawsuit in 1976, charging that completion of the dam would violate endangered species laws by destroying the snail darter's habitat.

The Sixth Circuit U.S. Court of Appeals agreed in January 1977, and stopped construction of the project, which

was almost complete. Proponents of the dam appealed the case to the Supreme Court, and the attorney general, Griffin B. Bell, made a rare appearance to argue for the dam.

But in June 1978 the Supreme Court upheld the lower court decision and said that if Congress wanted the dam built, it would have to exempt the project from the law.

The legislators managed to work out a compromise and amended the endangered species law to allow a special board of high-level federal officials to exempt a project from the law. The board, in its first decision, voted Jan. 23, 1979, against an exemption for Tellico. (*1978 Almanac p. 759*)

However, the Tellico issue was quietly reopened in June during House consideration of the energy and water development appropriations bill. John J. Duncan, R-Tenn., offered an amendment that was adopted when no one objected. With no mention of endangered species, the House had accepted an amendment exempting Tellico dam from any law that might hinder construction.

The Senate voted July 17 against an exemption for Tellico.

Unable to find a compromise, conferees reported the amendment in disagreement, and the House again insisted on completion of the dam. When the conference report was returned to the Senate with the exemption for Tellico intact, senators grew weary of the fight. They voted Sept. 10, 48-44, to allow the dam to be completed, and then accepted the conference report by voice vote. (*Vote 264, p. 45-S*)

By the end of November a 33-mile stretch of the Little Tennessee River started to back up behind the dam, creating a lake that eventually would cover 16,000 acres.

Provisions

As cleared by Congress, HR 4388 (PL 96-69) appropriated the following amounts for energy and water development programs for fiscal 1980:

Agency	Budget Request	Final Amount
Title I—Department of Energy		
Operating Expenses:		
Energy research and development		
Solar energy	\$ 391,098,000	\$ 423,948,000
Geothermal energy	117,152,000	121,552,000
Biomass	55,296,000	54,296,000
Hydroelectric power	18,324,000	18,324,000
Fusion energy	235,605,000	233,105,000
Electric energy systems	26,840,000	36,540,000
Energy storage	64,142,000	64,142,000
Converter reactors	48,216,000	75,716,000
Commercial waste management	175,765,000	164,015,000
Spent fuel storage	18,482,000	11,482,000
Liquid metal fast breeder reactor	348,900,000	308,900,000
Other advanced reactors	110,386,000	110,386,000
Space nuclear systems	38,106,000	37,506,000
Environmental research	254,358,000	246,758,000
Basic Energy Sciences	220,316,000	203,016,000
Technology Assessment	10,966,000	7,966,000

Agency	Budget Request	Final Amount
University Research Support	4,171,000	4,171,000
Technical Program Policy and Analysis	2,417,000	2,000,000
Carryover from previous years	—	-75,300,000
Total, Energy research	2,140,540,000	2,048,523,000
Uranium supply, enrichment	45,790,000	60,523,000
General science, research	336,900,000	336,900,000
Atomic energy defense	2,392,055,000	2,371,147,000
Policy, management, support	263,872,000	228,279,000
Total, operating expenses	5,179,157,000	5,045,372,000
Plant and capital equipment	1,349,017,000	1,211,742,000
Power marketing	164,392,000	164,392,000
Federal Energy Regulatory Commission	73,937,000	67,187,000
Geothermal Resources Development Fund	6,181,000	6,181,000
Total, Department of Energy	6,772,684,000	6,488,874,000
Title II—Army Corps of Engineers	2,696,342,000	2,795,926,000
Title III—Bureau of Reclamation	601,727,000	607,341,000
Title IV—Independent Offices:		
Appalachian Regional Development	358,600,000	356,500,000
Appalachian Regional Commission	2,990,000	2,990,000
Delaware River Basin Commission	364,000	364,000
Interstate Commission Potomac River	55,000	55,000
Nuclear Regulatory Commission	373,300,000	363,340,000
Susquehanna River Commission	314,000	314,000
Tennessee Valley Authority	121,872,000	148,677,000
Water Resources Council	66,244,000	34,614,000
Total, Independent Offices	923,739,000	906,854,000
Hart Senate Office Building	57,480,700	52,583,400
GRAND TOTAL	\$10,994,492,000	\$10,851,578,400

The bill also:

- Exempted the Tellico Dam from any federal law that blocked its construction.
- Provided for a resident inspector at each of the nation's operating nuclear power plants.

House Committee Action

The House Appropriations Committee reported HR 4388 (H Rept 96-243) June 7.

The committee recommended an appropriation of \$10,679,540,000, which was \$332,570,000 less than the budget request and \$517,288,100 more than fiscal 1979 appropriations. The major cuts were in funding for the Energy Department.

Energy Department

The committee cut \$378 million from the administration's request for the Energy Department, recommending that the agency receive \$6,395,074,000. That total was \$310 million more than the agency received in fiscal 1979.

The committee sidestepped the tussle between Congress and the administration over the \$1.2 billion Clinch River nuclear breeder reactor. Though noting in its report that House Appropriations had been a strong supporter of the project, the panel deferred funding because the authorizing committees of the House and Senate had taken opposite positions on the issue. House Science and Technology recommended continued funding of \$184 million (HR 3000 — H Rept 96-196, part 3), but Senate Energy endorsed termination (S 688 — S Rept 96-232) as requested by the Carter administration. The authorization dispute was not resolved before Congress completed action on the appropriations bill.

The committee also refused to fund the administration's request for \$40 million to study construction of a new breeder plant, again citing the still pending authorization.

The panel did thrust itself into another nuclear controversy by cutting the request for management of defense-related nuclear wastes from \$372 million to \$242 million, a reduction of \$130 million. Even though there was widespread agreement that the radioactive material should be put into permanent storage, the committee said in its report that "there is no consensus among Congress, the executive branch and the states concerned as to how and where to do this." Until that question was resolved, the panel said, emphasis should be on ongoing development, not on specific projects.

The major item in the reduction was the Waste Isolation Pilot Plant (WIPP) in southeastern New Mexico. The administration had sought \$55 million for the project, but the committee said it was a mistake to commit funds while Congress was still arguing over methods for solidifying the liquid waste, the type of facility that was needed and the timing of construction.

In other action, the committee:

- Reduced funding for atomic weapons activity by \$43 million, to \$1.614 billion. Included was a \$19 million reduction in funding for maintenance and upgrading of equipment at various locations.
- Reduced funding for departmental administration by \$49 million, to \$266 million.
- Reduced funding for basic research by \$26 million, to \$244 million. The committee report said some of the department's research was on application of technology already developed, instead of on basic research of emerging technologies, and was duplicating the agency's technology development programs.

Water Development

The committee provided \$2,771,466,000 to the Army Corps of Engineers for water projects, such as dams, canals

and flood control efforts. This amount was \$57,506,000 more than the administration requested and \$135,442,000 more than fiscal 1979 appropriations.

The panel endorsed funding for 22 new and 251 continuing studies, 10 new and 70 continuing planning items and 17 new and 227 continuing construction projects.

For the Interior Department's Bureau of Reclamation, the committee provided \$615,578,000, an increase of \$13,851,000 over the administration request. The total was \$35,663,000 more than the 1979 appropriation.

The administration had requested full, up-front funding for new projects, a change from the traditional practice of providing limited amounts over a period of several years. But the committee refused to change its system. Full funding would have increased the cost of the bill by \$339.74 million. All figures cited for the legislation exclude the full funding request.

No funds were appropriated for the "hit list" projects that President Carter fought in the fiscal 1979 appropriations bill.

House Floor Action

The House quietly gave completion of the Tellico dam the go-ahead before approving the \$10.7 billion bill June 18, 359-29. (*Vote 233, p. 70-H*)

Although debate spread over three days, the legislators made few changes in the measure reported by the House Appropriations Committee.

Members, particularly concerned about nuclear safety since the Three Mile Island (Pa.) plant accident in March, did vote \$5 million for a resident inspector at each of the nation's operating nuclear plants. Offered by Dan Glickman, D-Kan., the amendment was adopted June 18, 350-10. (*Vote 230, p. 70-H*)

But the House soundly rejected another nuclear-related amendment, refusing, 147-235, to prohibit operation of new reactors in states without emergency evacuation plans. (*Vote 232, p. 70-H*)

Tellico Amendment

The Tellico dam amendment, offered by John J. Duncan, R-Tenn., exempted the project from any law that might hinder construction. It was particularly aimed at laws protecting endangered species, which had stopped the dam because of potential harm to the snail darter.

After endorsements from Tom Bevill, D-Ala., chairman of the Energy and Water Development Subcommittee, and ranking minority member John T. Myers, R-Ind., the amendment was made part of the bill when no objection was heard.

Other Amendments Accepted

Other changes made in the bill during three days of debate June 14, 15 and 18, included amendments by:

- Timothy E. Wirth, D-Colo., to add \$2 million to pay for a personnel increase in the Energy Department's office of inspector general; adopted June 14 by voice vote.

- Peter H. Kostmayer, D-Pa., to remove restrictions in the bill that required 100 additional Nuclear Regulatory Commission (NRC) employees to be assigned only to licensing activities. The change gave the commission discretion so duties could include licensing, development of safety standards, inspections and other activities; adopted June 18, 350-12. (*Vote 231, p. 70-H*)

- George Miller, D-Calif., to add \$50,000 for a Bureau of Reclamation study of combining wind energy with hydroelectric power; adopted June 14 by voice vote.

Amendments Rejected

The House rejected several amendments by wide margins.

Intervenor Funding. Christopher J. Dodd, D-Conn., sought to remove the prohibition in the bill against paying expenses of intervenors in proceedings before the Federal Energy Regulatory Commission (FERC). He wanted to replace the prohibition with a cap of \$600,000.

But James P. Johnson, R-Colo., who argued against Dodd's proposal, successfully amended it so that consumer advocates or other intervenors whose side lost would have to repay any federally provided expense money to the winning side. The vote was 257-156. (*Vote 221, p. 68-H*)

The House then rejected Dodd's proposal, as amended by Johnson, by voice vote.

Water Projects. Three amendments were offered to delete funding for water projects. Carter, who had vetoed the fiscal 1979 appropriations bill because it funded projects on his "hit list," stayed out of the dispute.

Robert W. Edgar, D-Pa., wanted to delete \$9.835 million for construction of the Stonewall Jackson dam on the Monongahela River in West Virginia. Edgar said the project could cost as much as \$250 million and was not justified either for recreational or flood control purposes as claimed by the Corps of Engineers. "This project has no merits," said Edgar, who described himself as "angry at the Congress for its failure to stand up to the politics of pork."

Supporters, including Harley O. Staggers, D-W.Va., and Joseph M. Gaydos, D-Pa., argued that the dam would protect against floods and aid in efforts to improve water quality. Gaydos said he resented Edgar for criticizing a project that affected Gaydos' district.

The amendment was defeated on a 13-97 standing vote.

John J. Cavanaugh, D-Neb., offered an amendment to delete \$6 million for construction of the O'Neill Unit, in northern Nebraska, of the Pick-Sloan Missouri Basin project. He argued that the \$200 million irrigation project would benefit only 480 farms. He questioned the dam's safety and said its construction would disrupt agricultural production in the region.

But Virginia Smith, R-Neb., argued that the project was needed and that her district deserved it as its share of the Pick-Sloan project. "If this soundly conceived, vital project is jeopardized by unnecessary delay for lack of funding, then no public works project, regardless of its merit, will be safe from similar assaults," she told her colleagues. They voted 106-210 against the Cavanaugh amendment. (*Vote 227, p. 68-H*)

Another proposal to cut funding for a water project was offered by George E. Brown Jr., D-Calif., who sought to delete \$5.3 million for construction of a desalinization plant near Yuma, Ariz. Brown said justification for the plant should be re-examined because estimated costs of the project were escalating rapidly. The House disagreed, rejecting the Brown amendment, 34-253. (*Vote 228, p. 70-H*)

Nuclear Licensing. The amendment to prohibit the NRC from issuing operating licenses to nuclear reactors located in states without emergency evacuation plans prompted a lengthy debate. James Weaver, D-Ore., said

was endangered, it would be more likely to use its nuclear arsenal to avert its possible destruction by the West, these members argued.

Several liberals, who in the past supported this argument, voted against the Hatfield amendment, apparently in hopes of winning conservative support for the SALT II strategic arms control treaty. But several sources doubted that there were enough such votes to kill M-X even if the SALT treaty were rejected.

Nevertheless, uncertainty remained over how to base and protect the M-X. There was strong skepticism in the Senate toward the so-called "racetrack" launching plan for M-X favored by President Carter. This was due primarily to the estimated \$30 billion price tag, the complexity of the design and the tremendous human and physical impact the racetrack system would have in Nevada and Utah where it was proposed to be built. Immediately after rejecting the Hatfield amendment, the Senate adopted, 89-0, an amendment by Ted Stevens, R-Alaska, stipulating that none of the funds spent on M-X could be used to commit the missile system to any one launching system.

9. FUEL AID TO THE POOR. An example of the regional differences that frequently divide members of Congress came Nov. 14 when the Senate voted on a formula for distributing federal aid to help poor people heat their homes. Senators from Northern states were almost unanimously opposed to those from Southern states over whether the fuel aid should be "tilted" toward the cold or warm regions.

The vote came on a bill (S 1724) establishing a two-year program, for fiscal years 1981 and 1982, that was designed to respond to the rapidly rising prices of home heating fuels. The bill later was made part of the windfall profits tax measure (HR 3919).

The original version of S 1724, as reported by the Finance and Labor and Human Resources committees, used a formula that was relatively generous to Southern states. This angered Rudy Boschwitz, R-Minn., and Edmund S. Muskie, D-Maine, who responded with an amendment that would have steered much of the fuel aid back to the Northern states.

The regional differences were clearly shown when Muskie moved to table a Robert Dole, R-Kan., amendment that was a modified version of the committees' distribution formula. Muskie's motion to table was rejected 41-50: R 20-19; D 21-31 (ND 21-15; SD 0-16).

The issue was resolved, at least temporarily, when the opposing factions came up with a compromise that was more favorable to the North than the committee bill, but less so than the Boschwitz-Muskie amendment. However, senators from both the North and South made clear that they thought the arrangement was unfairly favorable to the other region.

The House displayed a similar regional split when it voted on the formula for heating aid distribution for the winter of 1979-80.

10. ELECTORAL COLLEGE. A diverse Senate coalition that crossed party and ideological lines combined July 10 to defeat the proposed constitutional amendment to abolish the Electoral College and to elect the president by direct popular vote.

Some Northern liberals aligned with a majority of Republicans and Southern Democrats to thwart passage of the direct election amendment (S J Res 28). With no action on

the amendment in the House, the Senate vote terminated consideration of the proposal during the 96th Congress.

For more than a decade, the amendment's major sponsor, Democratic Sen. Birch Bayh of Indiana, chairman of the Judiciary Subcommittee on the Constitution, had promoted the direct vote measure. When it was last brought to the Senate floor in 1970, the amendment fell victim to a late session filibuster.

Bayh and his allies argued that the Electoral College system may have been adequate for electing a president in the nation's early years but was an anachronism in the 20th century. Proponents contended that it constantly ran the risk of a misfire, sending a popular vote loser to the White House because he had obtained an electoral vote majority. Such an event, they warned, could bring a constitutional crisis.

Opponents countered that the system had not misfired since 1888 and that a constitutional change in the method of electing the president could unhinge the whole federal system with its checks and balances, concurrent majorities and separation of powers.

The amendment ran ahead by a vote of 51-48: R 12-28; D 39-20 (ND 31-9; SD 8-11) but fell 15 votes short of the required two-thirds majority of those present and voting needed to approve a constitutional amendment.

11. TELlico DAM/ENDANGERED SPECIES. The floodgates of Tennessee's Tellico Dam were closed Nov. 30 and 16,000 acres of adjacent land were slowly inundated as environmentalists lost their fight to kill the controversial \$130 million project.

In 1978, the Supreme Court had halted construction of the dam, agreeing with the argument of conservationists that it would destroy the habitat of a tiny endangered fish, the snail darter. The federal Endangered Species Act barred federal public works projects that threatened an endangered species or its habitat.

But proponents of the dam and others successfully amended the law later in the year by creating a commission that would have the power to grant projects an exemption from the act. The panel took up the Tellico question in January, but it refused to allow construction to proceed.

So dam proponents went back to Congress. In June, Sen. Howard H. Baker Jr., R-Tenn., tried to get the Senate to exempt Tellico, but members refused to go along, 43-52.

Dam proponents were more successful in the House, however, and slipped a Tellico exemption into the energy and water development appropriations bill (HR 4388). Nevertheless, when that bill got to the Senate, members again refused to give Tellico the go-ahead.

But on Sept. 10, with it became clear that the House intended to stand by its position, the Senate gave up the struggle and agreed to let the project proceed. The vote was 48-44: R 28-10; D 20-34 (ND 7-29; SD 13-5).

12. SYNTHETIC FUELS. Two Senate committees considered President Carter's proposal for a multibillion-dollar national investment in synthetic fuels, which are liquids and gases made from coal, shale and other unconventional energy sources. The program was designed to reduce U.S. dependence on imported oil.

The Energy Committee, enthusiastic about the program, agreed to spend \$20 billion on synfuels development and to establish a government corporation that could, if necessary, actually own a synthetic fuels plant.

But the Banking Committee was skeptical. The panel approved only a \$3 billion proposal and emphasized aid

The conferees also loosened the definition of a 20 percent shortage, applying the test to gasoline and middle distillate supplies instead of overall petroleum supplies. Senators and the administration had been concerned that a 20 percent shortage of petroleum could mean a 40 to 50 percent shortage of gasoline.

Conservation Trigger

Conferees also had to resolve differences over when federal energy conservation plans would be imposed on those states that had failed to develop adequate plans of their own.

Both bills directed the federal government to set energy conservation goals for each state. Although the intent was to have each state take steps to meet its goal, the federal government could impose conservation measures on a state that failed to save enough energy. But the House bill would prevent the federal government from stepping in unless there were a 10 percent shortage of petroleum and unless neither house of Congress objected.

The Senate bill had no similar restriction, and Senate conferees opposed the House provision. They said the conservation section of the bill was designed to encourage energy saving measures before a crisis developed. The House restriction linking conservation to a 10 percent shortage meant the federal government could not force conservation until there was a serious emergency.

The compromise finally worked out set the trigger at 8 percent. If a state with an approved conservation plan failed to meet its conservation target during an emergency, and the shortage in the state was at least 8 percent, the federal government could impose federal conservation measures. The 8 percent requirement would not apply in states without a federally approved plan; in those states the federal government could impose conservation measures whenever during an emergency it appeared such states would not meet their conservation targets.

Final Action

The Senate adopted the conference report Oct. 17 on a 77-18 vote. (*Vote 359, p. 59-S*)

The House cleared the bill when it adopted the conference report Oct. 23 on a 301-112 vote. (*Vote 527, p. 154-H*)

The president signed S 1030 into law Nov. 5. ■

Endangered Species Act

Congress cleared a three-year reauthorization of the Endangered Species Act after reaching a compromise that allowed the continued independence of a scientific panel that advised the government on international trade in endangered species.

The House and Senate both adopted the conference report on the bill (S 1143 — PL 96-159) Dec. 19 by voice votes, with almost no debate in either chamber.

The only major point of contention in conference was a House provision that put the Endangered Species Scientific Authority (ESSA) — established under the Convention on International Trade in Endangered Species (CITES) — under the control of the Interior Department.

The convention required that participating countries establish a scientific authority to advise which endangered species could be traded internationally without contribut-

ing to their extinction. In the United States, that body was ESSA, an independent seven-member panel of scientists.

But the House, at the urging of John B. Breaux, D-La., put the panel under Interior Department control. Breaux felt the panel had overstepped its authority when it tried to halt export of alligators, an important Louisiana industry.

Environmentalists opposed that provision, fearing that it would make the panel susceptible to political pressure.

The compromise provided that the panel would remain independent but would be renamed the International Convention Advisory Committee. It would still advise on trade in endangered species.

The role of the scientific authority would be taken over by the interior secretary, acting through the U.S. Fish and Wildlife Service. The service would make final decisions on trade in endangered species, but would have to respond publicly to recommendations of the advisory panel.

Tellico Fight Averted

A potential fight over completion of the Tennessee Valley Authority's Tellico Dam was averted when House proponents of the dam chose another measure on which to make their stand.

Completion of the dam had been stopped in June 1978 when the Supreme Court ruled that the 1973 Endangered Species Act (PL 93-205) barred operation of the dam because completing it would destroy the habitat of an endangered three-inch fish called the snail darter. After that, Congress revised the act and set up a review board with power to exempt specific projects from the endangered species law. But in its first decision, the board refused to exempt Tellico. (*Background, 1978 Almanac p. 707*)

During consideration of the endangered species reauthorization, both the Senate Environment and Public Works Committee and the full Senate rejected attempts to exempt Tellico from the law.

House Tellico proponents also offered such an amendment, but to the fiscal 1980 energy and water development appropriations bill (HR 4388 — PL 96-69). The Senate at first refused to accept the House provision but finally gave in when it became obvious that the House would not relent. President Carter, also opposed to completion of the dam, considered vetoing the bill but decided against it. Once he had signed the appropriations bill, the House proceeded with action on the endangered species reauthorization. (*Appropriations bill fight, p. 223*)

Provisions

In addition to revamping ESSA, S 1143 (PL 96-59):

- Expanded the act to protect endangered plants as well as endangered fish and wildlife.

- Required the interior secretary to review the latest and best available data on the status of a species before proposing that it be listed as endangered or threatened.

- Required that the Interior Department, when proposing that a parcel be designated a critical habitat for an endangered species, publish a summary of the proposal and a map in local newspapers rather than continuing the practice of publishing only the text of the proposal.

- Required federal agencies to make sure their projects "are not likely" to jeopardize an endangered species. Existing law required agencies to make sure a project "does not" jeopardize a species before it could be built.

- Authorized all those seeking exemptions from the act — not just federal agencies — to get permanent exemptions

for a project, unless a biological study found completion of the project would result in extinction of a species.

- Extended for three years the "scrimshaw" exemption allowing trade in whale products held in stock before 1973.
- Authorized up to \$25.5 million for fiscal 1980, \$28 million for 1981 and \$30.5 million for 1982 for operation of the endangered species program.

Senate Action

Senate action on the endangered species reauthorization was routine. The Senate Environment and Public Works Committee reported S 1143 (S Rept 96-151) May 15 by voice vote after rejecting, 3-8, a move by Howard H. Baker Jr., R-Tenn., to exempt Tellico Dam from the act. As reported, the bill authorized \$85.8 million to carry out the act through fiscal 1982.

Baker offered his amendment again when the bill came to the floor June 13. But the Senate refused, 43-52, to grant an exemption to the dam. (*Vote 128, p. 23-S*)

The senators also defeated, 14-80, an amendment by Henry Bellmon, R-Okla., that would have limited protection under the act to only those species that the interior secretary determined had "an economic or aesthetic value to man." (*Vote 129, p. 23-S*)

The Senate passed the bill, 91-5. (*Vote 130, p. 24-S*)

House Action

The House Merchant Marine and Fisheries Committee reported its version of the reauthorization (HR 2218 — H Rept 96-167) May 15. It provided \$28.6 million each in fiscal 1980-82 for a total of \$85.8 million.

Floor action on the bill was delayed until the Tellico Dam-snail darter issue was resolved on the energy and water development appropriations bill.

However, even before HR 2218 came to the floor, the Breaux amendment threatened to open the bill to a raft of amendments exempting various projects from the act.

Breaux was eventually persuaded to modify his amendment package to defuse opposition from environmentalists, and it was this modification that he offered to the House during floor debate Oct. 24.

Breaux Amendment

The Breaux amendment, adopted by voice vote, included several parts. First, it put the autonomous Endangered Species Scientific Authority (ESSA) under the control of the Department of the Interior.

Breaux argued that the ESSA board was beginning to make policy decisions instead of merely scientific determinations, and he wanted to put the board under control of a federal agency if it were going to make policy.

Breaux was concerned about ESSA's efforts to control the export of non-endangered American alligators, which were prevalent in Louisiana. ESSA said export would indirectly harm certain endangered crocodiles that looked like alligators. Because the American alligators so closely resembled crocodiles, the board reasoned that their export would encourage continued trade in endangered crocodile hides by increasing the market for the hides.

Environmentalists, led by Paul N. McCloskey Jr., R-Calif., objected to the Breaux amendment, saying putting ESSA under Interior's control would make it susceptible to political pressures.

But the amendment was approved after Breaux assured McCloskey that it would not affect the board's ability to make independent scientific decisions.

The Breaux amendment also contained several minor word changes to the Endangered Species Act, including:

- A phrase that made permanent any exemptions granted to federal public works projects by the Endangered Species Committee, a panel set up in the 1978 revision of the act (PL 95-632). (*1978 Almanac p. 708*)

- A phrase to require federal agencies to make sure their projects "are not likely" to jeopardize an endangered species. Existing law required agencies to make sure their projects "would not" jeopardize a species. Proponents said the existing standard was unrealistic and unachievable because it would be impossible to ensure that an action would not have an adverse effect on a species.

Breaux's original amendment package had included a section outlining the criteria ESSA could use to decide whether trade in an endangered species should be allowed. But McCloskey and the State Department argued that this wording violated the CITES treaty, because the treaty already outlined how such decisions should be made.

So Breaux deleted from his original amendment the portion spelling out how ESSA was to make decisions on exports of endangered species.

Other Action

The House also adopted by voice vote an amendment by Edwin B. Forsythe, R-N.J., authorizing \$5.1 million for the Agriculture Department to monitor the illegal importation of endangered plants and animals.

The House then passed HR 2218 by voice vote. The bill, as passed, authorized \$30.1 million for fiscal 1980, \$30.35 million for fiscal 1981 and \$30.45 million for fiscal 1982, for a total of \$90.9 million.

Final Action

House-Senate conferees Dec. 4 approved in about 15 minutes the conference report (H Rept 96-697) on the endangered species reauthorization. Most major differences had been worked out by staff before the conference began.

Conferees agreed that the interior secretary, acting through the Fish and Wildlife Service, would take over the role of the scientific authority to advise which endangered species could be traded internationally without contributing to their extinction.

The conferees provided that the ESSA panel, would continue, except that the member appointed by the Department of Health, Education and Welfare would be appointed instead by the Fish and Wildlife Service. The name of the panel would be changed from ESSA to the International Convention Advisory Commission.

The compromise also required that the scientific authority in the Fish and Wildlife Service respond to recommendations by the new advisory commission, and publish those responses in the *Federal Register*.

Environmentalists had lobbied hard for that requirement and for the provision giving the advisory commission autonomy.

The compromise also made permanent any exemption granted a project by the Endangered Species Committee unless a biological study found completion of the project would result in extinction of a species. If there were such a finding, developers could seek another exemption. ■

Several of the remaining controversial projects, described as "cats and dogs" by one House aide, were included in a separate bill (S 491) passed by the House Oct. 4, but never taken up in the Senate.

Among the controversial provisions put in S 491 were designation of San Antonio Missions in Texas as a national historic park. The project was opposed by some senators and administration officials because of possible conflicts between church and state that might result from continued church operations inside the facility and Department of Interior management on the outside. However, that park eventually was created in another bill (S 1829).

Another controversial provision would have changed the name of the Indiana Dunes National Lakeshore to Paul H. Douglas Indiana Dunes in honor of the late Democratic senator from Illinois (1949-67). Douglas was instrumental in establishing the park, but Indiana's senators, Democrat Birch Bayh and Republican Richard G. Lugar, opposed the name change and any bill that included it.

But there were still some complaints in the Senate. Burton spent a lot of time on the Senate floor, trying to work out individual problems, and Senate and House staff met to resolve the differences. Eventually, the Senate came up with a package of about 27 amendments to S 791, many of them minor, and Sen. James Abourezk, D-S.D., prepared to offer the changes on the Senate floor.

Among the major changes included in the 27 amendments were the following:

- Deletion of a House provision that would have reimbursed the Walt Disney Corp. for losses incurred by the addition of Mineral King Valley to the national park system. In addition, the Senate wanted language clearly stating that downhill skiing would be incompatible with management of the area as a park.

- Modification of a House provision that would have allowed government condemnation of homes within the Fire Island National Seashore in New York if a home were 50 percent destroyed by a hurricane or other disaster and were located on the dunes or in a community 50 percent destroyed by the natural catastrophe. The Senate wanted language to allow government condemnation and purchase only of property in a special Dunes District on the beach and then only if the property owner started building after the date S 791 was enacted.

- Deletion of the North Country National Scenic Trail running from New York to North Dakota because of questions from senators and because, according to Senate aides, no hearing was held on the trail. Also to be deleted was government authority to buy lands on or along any trail, though areas could still be designated as trails.

Still Another Version

But before Abourezk could attach the amendments to S 791, Burton, afraid time would run out on the bill, added them to yet another measure. On Oct. 11, he attached the text of S 791 plus the 27 amendments to another bill, HR 6900, which the House readily passed.

As it turned out, the Senate Oct. 12 had time to take up the second version, S 791. HR 6900 died.

In addition to adding the package of 27 amendments, the Senate adopted an amendment offered by Sen. Charles McC. Mathias Jr., R-Md., to expand the boundaries of the Hampton National Historic Site near Towson, Md.

Rejected were amendments offered by Sen. Mike Gravel, D-Alaska, to delete the designation of the Middle

Delaware River and thus avoid obstructing the Tocks Island Dam, and by Sen. S. I. Hayakawa, R-Calif., to delete the addition of Mineral King Valley to the Sequoia National Park.

S 791 then went back to the House, which approved it by voice vote Oct. 13.

Pennsylvania Avenue Development

In the flurry of bill-passing, the legislators left out of S 791 the authorization for the Pennsylvania Avenue Development Corporation, the overseer of improvements to the avenue between the White House and Capitol Hill. The authorization had been included in the first House parks bill, HR 12536. The House Sept. 29 then resurrected and passed another bill (S 2566) containing the corporation's authorization and sent it to the Senate.

But the Senate Oct. 12 added several items to the bill, including the deauthorization of the Cross Florida Barge Canal, a controversial project supported by some House members. Rather than have the development corporation tangled up with that and other controversies, the House added the authorization for the corporation to still another Senate bill (S 1829).

That bill also included authorization for the San Antonio Missions National Historical Park in Texas, which was included in the original House-passed parks bill, but not in the final version.

The House and then the Senate approved S 1829 (PL 95-629) on the final day of the session. S 2566 died.

A provision creating the War in the Pacific National Historical Park in Guam was pulled from the original House-passed parks bill and added to S 2821, which cleared Congress Aug. 4 (PL 95-348).

Endangered Species Curbs

Congress Oct. 15 cleared legislation allowing exemptions under the Endangered Species Act so that future conflicts with public works projects — such as the one that pitted a tiny fish against a Tennessee dam — could be avoided.

As signed into law, the bill (S 2899 — PL 95-632) set up a Cabinet-level board to consider permitting construction of federal projects, even though they might kill off species protected by the 1973 law (PL 93-205). (*Endangered Species Act background, 1973 Almanac p. 670*)

The drive in Congress to make the law more flexible was sparked by a June 15 Supreme Court decision barring operation of the Tennessee Valley Authority's (TVA) Tellico Dam, which already had been built. The court, in a 6-3 decision, ruled that opening the floodgates of the \$119 million dam would destroy the critical habitat of a three-inch fish called the snail darter.

Rearguard Tactics

The sentiment to soften the law was so strong in Congress that members allied with environmentalists early on gave up fighting the concept of exemptions. Instead, members such as Rep. John D. Dingell, D-Mich., concentrated their efforts on keeping modifications of the law to a minimum.

At one point, Rep. Robin L. Beard Jr., R-Tenn., a critic of the law, threatened to introduce 682 amendments to the

bill, lifting protection for many species, if his views did not prevail. In the past, Beard had sought fruitlessly to get an exemption to the law for TVA's Columbia Dam in his district.

Environmentalists scored one of their few victories when the conference committee rejected a House provision granting automatic exemptions for both Tellico and the Gray Rocks Dam in Wyoming. A U.S. District Court had ruled that the Wyoming project could not be completed because it threatened an area along the migratory patterns of the whooping and sandhill cranes.

Meeting on the final day of the session, the conferees settled on mandating an early review of the Tellico and Gray Rocks projects by the Cabinet-level board.

Generally, however, the law's critics had their way. For instance, the conferees retained a House provision limiting funding authorization for administration of the act to 18 months. The Senate version authorized funding for three years.

Critics wanted the shorter authorization period so they could hold oversight hearings sooner on how the changed law was being implemented. Also, many members were influenced by word that a General Accounting Office study, due out February 1979, would criticize the administration of the existing law.

Conference and final action on S 2899 came quickly because the authorization for the Office of Endangered Species had expired Sept. 30. A wide variety of federally funded projects — such as airport expansion, highway construction and dam building — were forced to halt because they could not complete a legally required consultation with the office.

The review board created by S 2899 consisted of seven persons. Its rulings were to be based on recommendations made by a lower-level, three-member panel.

The bill first was passed by the Senate July 19 by a huge 94-3 margin. The original Senate bill provided only for a Cabinet-level board.

Provisions

As approved by Congress, S 2899 (PL 95-632):

- Set up a seven-member Endangered Species Committee to determine whether a project should be exempted. At least five votes would be needed to grant an exemption. The board would be composed of the secretaries of agriculture, the army and the interior; the chairman of the Council of Economic Advisers; the administrators of the Environmental Protection Agency and the National Oceanic and Atmospheric Administration; and a presidential appointee from the affected state, as recommended by its governor.
- Established a lower-level, three-member board to hear cases and make recommendations to the Cabinet-level group. This panel would be made up of one member appointed by the interior secretary; one from the affected state, as suggested by its governor and appointed by the president; and an administrative law judge selected by the Civil Service Commission.
- Required that a project meet three tests to receive an exemption. It would have to demonstrate that 1) there was no "reasonable and prudent alternative," 2) its benefits to the public outweighed the continued existence of a species and 3) it was of national or regional significance.
- Mandated that the Cabinet-level board establish methods to save a species if it were doomed by the approval

of a project. Breeding a species in captivity or transplanting it to another locale would be two such ways.

- Required that the interior secretary review the endangered species list every five years to see if some species might be dropped and some added.

- Required public hearings by the Interior Department for designation of endangered species' critical habitats. The hearing had to occur in the same area where the proposed site designation was located.

- Restricted the authority to apply for an exemption to governors, the federal agency concerned and the holder of a federal permit or license to build and operate a project.

- Allowed any person to appeal the review board's decision in court.

Background

The snail darter's victory over the dam in a June 15 Supreme Court decision was, to many in Congress, a stupefying absurdity — a signal that the law, passed amid great fanfare five years earlier, had gone too far.

In its decision, the court ruled 6-3 that the Tellico could not operate, even though it was virtually complete, because shutting its floodgates would wipe out the endangered snail darter. The fish's critical habitat — the special biological surroundings it needed to survive — would be obliterated by closing the dam and the 1973 law forbade any federal project from harming an endangered species.

Other than the \$119 million Tennessee dam, only one project had been stopped by the law, the \$50 million Gray Rocks Dam in Wyoming. Two other dams under construction, the Columbia in Tennessee and the New Malones Lake in California, were headed for a conflict with the act.

After the Supreme Court ruling, editorial cartoonists and television comedians had a lot of fun over the issue, while Rep. Helen Meyner, D-N.J. expressed her concern for such imaginary endangered birds as the "Ruffled Spouse" and the "Double-breasted Seersucker."

In the view of many, it was bizarre that a federal law that protected such storied creatures as the grizzly bear and the bald eagle should be extended by the Interior Department — whose Endangered Species Office designated which species were to be protected — to cover obscure, seemingly insignificant little things like mollusks, beetles and snapdragon plants. Brushed aside was the environmentalists' argument that even the smallest elements in the earth's ecological system are vital.

"It might have been different if the bald eagle or the California Condor were involved," lamented Toby Cooper, program director of the Defenders of Wildlife. "That's how you got this smear campaign going against the Endangered Species Act."

Although clashes between projects and species had been few in the five years of the law's operation — just four court decisions had been rendered — many in Congress perceived that federal protection of wildlife was running amok.

"There is not a district in this country that will be immune from the kind of problem we are facing unless the law is changed," warned Rep. John Buchanan, R-Ala.

As complaints flooded in from developers and state and local officials about the application of the law, members came under increasing pressure to change it, if not abolish it altogether. Typical was the request that an

exasperated Rep. Tom Bevill, D-Ala., once reportedly made to Interior Secretary Cecil D. Andrus "to get the snail darter off my back."

"According to the law, the Defense Department's first priority was protecting endangered species and its second priority was national defense," said David R. Olson, a House Appropriations Public Works Subcommittee aide.

Following the court's Tellico ruling, even a number of members considered pro-wildlife began wondering whether the law needed to be reined in. Interior Committee Chairman Morris K. Udall, normally a friend of the environmentalists, remarked on the floor that conflicts between obscure species and projects "get the whole act into trouble, into disrepute."

In testimony before the Senate Environment Committee in April, Donald C. Simpson of the Pacific Legal Foundation, a pro-development group, illustrated the ludicrous level which many believed the act had reached.

Noting the White House's longstanding rodent problem, Simpson said, "After 20 years of interbreeding in an isolated location such as [the executive mansion], it is possible that unique subspecies or lower taxa have developed for which the White House is a critical habitat. Should not the extermination of these unique mice be enjoined?"

The act's defenders argued that the Endangered Species Office was not as arbitrary as the critics pictured it.

"The law worked well," said Keith M. Schreiner, associate director of the Fish and Wildlife Service and overseer of the office. "We implemented hundreds of programs, put out full regulations and saved lots of endangered species."

In addition to placing a species under the federal mantle — maximum penalties for harming or capturing a protected creature was a year in jail and \$20,000 fine — Schreiner noted that the office also tried to increase the lifeform's population. "Our goal is to get it off the list," said Schreiner.

According to Schreiner, the listing process was well organized, divided into at least 10 steps. The aim was to make a designation, in the parlance of the office, "sue-proof."

Some environmentalists said the office had moved too slowly. "It's dragged its heels on a number of occasions," said the Defenders of Wildlife's Cooper.

In the United States, there were 177 animals and 15 plants listed as endangered, as of September 1978. Threatened species — a category for lifeforms that were slightly less imperiled — numbered 37 animals and two plants.

Of the almost 6,000 consultations between the office and builders to see if a project met the law, only four had reached court, up through September 1978.

Often, Schreiner said, compromises were worked out before an issue got to court. He cited the case of the Furbish lousewort, an obscure Maine snapdragon that stood in the way of the \$533 million Dickey-Lincoln hydroelectric project. The office arranged to transplant the two-foot lousewort elsewhere, letting the dam go forward. (The project had another problem, though. It was opposed by the Carter administration.) (1977 *Almanac* p. 650)

Senate Action

The Senate Environment and Public Works Subcommittee on Resource Protection approved S 2899 May 2 on a

voice vote. A bipartisan group of subcommittee members had developed the proposal for a special seven-member federal board that could exempt projects from the endangered species law if the board members decided the benefits of the project "clearly outweigh[ed]" the value of the threatened species.

The bill was reported by the full committee May 15 (S Rept 95-874). The Senate passed the bill July 19, on a 94-3 vote. (Vote 221, p. 36-S)

Passage of the measure followed the 22-76 defeat July 18 of a key, weakening amendment sponsored by John C. Stennis, D-Miss. (Vote 216, p. 35-S)

Stennis, a longtime advocate of federal dams and waterways, wanted to exempt from the law any project for which funds had been appropriated or contracts let before the law was enacted or on which construction was 50 percent completed.

His amendment also would have left resolution of any conflicts between species and projects up to the federal agency building the project.

Giving construction agencies that responsibility is "a bit like putting the fox in charge of the henhouse," complained John H. Chafee, R-R.I.

Efforts to strengthen the bill were no more successful than moves to weaken it.

Gaylord Nelson, D-Wis., who planned to offer an amendment to retain the existing 1973 law, chose not to when it was obvious the amendment would get few votes.

Another Nelson amendment, which would have limited exemptions to projects well under way, also failed, 25-70. (Vote 219, p. 35-S)

John C. Culver, D-Iowa, led what was often an emotional floor debate. "It does on the surface seem stupid to save something like a snail darter, some crazy bat, some crayfish, something called a Furbish lousewort," Culver told the Senate, referring to other species that threatened the future of certain projects.

But, he continued, "it is also true, in my judgment, that we have the ethical and moral responsibility to pass on to future generations, in as pristine a state as possible, what we in turn have inherited."

The loss of species has accelerated rapidly since prehistoric times, when one species was extinguished every 10,000 years, Culver said. Around the year 1600, the rate increased to one every 1,000 years, Culver said, until "today, from one to 20 species are extinguished from our global environment every single year."

"The cause of our accelerated pace of natural extinction is man," Culver said.

People vs. Fish

But Stennis and others argued that the law was still too tightly written even with the committee's changes. "This law as it is now is crippling," Stennis said.

Bill Scott, R-Va., tried several times to limit application of the law to certain species. "People are more important than fish," Scott told the Senate.

One Scott amendment would have limited the definition of threatened species to those that were "of substantial benefit to mankind." The proposal was defeated July 18, 2-87. (Vote 218, p. 35-S)

The Senate did accept an amendment by H. John Heinz III, R-Pa., that would make it more difficult to exempt a project. Heinz's change required that the members of the board themselves — not substitutes — cast the

actual votes on whether to exempt a project. Five of the seven members would have to vote for an exemption. In all but the final votes on a case, the board members could be represented by an assistant, but only one whose post was high enough to require Senate confirmation.

Members of the board would be the secretaries of the interior, agriculture and the Army; the chairman of the Council on Environmental Quality, the administrators of the National Oceanic and Atmospheric Administration and the Environmental Protection Agency and the governor of the state in which the project was located.

Members also adopted a Nelson amendment reducing from \$2.5 million to \$750,000 the annual authorization for the board. Another Nelson amendment, which also was adopted, required preparation of an environmental impact statement on the threatened species or its critical habitat before the board could grant an exemption.

Most conservation groups preferred that existing language in the law be retained. They, along with Nelson, argued that hundreds of conflicts between species and projects had been worked out. The Tellico Dam, Nelson contended, was the exception, not the rule, and should never have been started in the first place.

House Alternatives

Meanwhile, opponents of the Endangered Species Act were making other attempts to get around the law.

Rep. Beard opened the way for House changes when he tried to tie his criticism of the endangered species law to the fiscal 1979 Interior appropriations bill (HR 12932).

Beard proposed 682 amendments, each one prohibiting use of funds in the bill for protection of federally listed endangered species. He also included species found only in foreign countries. Consideration of the amendments would have taken hours, perhaps days.

But, at the last minute, Beard agreed to drop the amendments when he was assured that he could amend the Endangered Species Act itself, his original purpose.

Beard had been one of the most vocal House opponents of the act. But his efforts to exempt a dam in his district — TVA's Columbia Dam — from the law had gotten nowhere in the Merchant Marine Committee.

Instead, the committee, which had written the law in the first place, wanted to take a measured look at how it was working before considering amendment or exemptions.

Committee Action. To meet the deadlines of the Congressional Budget Act, the Merchant Marine Committee March 31 reported HR 10883, which extended funding for the law (H Rept 95-1026). The committee made no change in Section 7, which protected species from federal actions.

The provisions of that bill were later included in HR 14104, which was reported unanimously by the Merchant Marine Committee Sept. 25 (H Rept 95-1625). That measure, providing for a six-member review panel, was slightly different from the Senate bill (S 2899).

House Floor Action

Bargaining was intense over the make-up of the board, with both sides pushing for inclusion of officials they felt would be more sympathetic to their views.

But tempers flared when the bill reached the House floor, especially after amendments were approved giving exemptions to the two dams.

At one point, Andy Jacobs Jr., D-Ind., shook his fist at Dingell, whom he accused of using "abusive language," and declared, "Somebody around here is about to become an endangered species if he comes up to me that way again without a pistol."

The House Oct. 14 passed HR 14104 on a 384-12 roll-call vote and substituted its text for that of S 2899 so the conference committee would be working with one bill. (*Vote 814, p. 232-H*)

The House approved amendments:

- Reducing extensions of funding authorization for the Office of Endangered Species, in the Department of the Interior, from three years to 18 months. Beard insisted on the change, threatening to tie up the House indefinitely if he did not get it. Funding for the office was \$23 million in fiscal 1979 and \$12.5 million for the period from Oct. 1, 1979, to March 31, 1980. The Department of Commerce, which also administered the act, was given \$2.5 million for fiscal 1979 and \$12.5 million for the following six months.

- Stipulating that the Gray Rocks Dam and Reservoir, known as the Missouri Basin Power Project, satisfied the requirements of the act and did not need to go before the review board. The standing vote was 29-14.

- Exempting the Tellico Dam and Reservoir Project from the provisions of the act. The amendment's sponsor, John J. Duncan, R-Tenn., whose district contained the dam, argued that the project no longer threatened the snail darter. A large number of the fish had been transplanted to another river, he said. The vote was 231-157. (*Vote 813, p. 230-H*)

- Striking language from the House bill that directed courts to give preference over other matters to appeals of endangered species rulings by the review board.

- Requiring the secretary of the interior to consider the economic impact of designating an area the critical habitat of a species.

- Exempting military activities related to preparedness from the provisions of the act. This allowed maneuvers, equipment testing and other training to go forward despite the presence of an endangered species. Other military-related activities, however, such as the building of an officers' club, would continue to be subject to the law.

- Permitting appeals of board decisions to begin in the circuit court of appeals, rather than in the U.S. district court, where calendars were more clogged and the chances of delay greater.

Conference Action

The major change made in conference was to alter the composition of the Cabinet-level board, tilting it slightly more toward the pro-development side. The chairman of the Council on Environmental Quality, included in both House and Senate bills, was replaced by the chairman of the Council of Economic Advisers (CEA).

Early review for the Tellico and Gray Rocks projects was substituted for automatic exemption using the argument that special consideration for the two dams in the bill would undermine the integrity of the act.

Other major House amendments were accepted by the conference committee.

Both houses swiftly approved the conference report (H Rept 95-1804) by voice votes Oct. 15.

CQ House Votes 522 - 529

522. Procedural Motion. Guyer, R-Ohio, motion to approve the House Journal of Thursday, Oct. 18, 1979. Motion agreed to 309-8: R 125-3; D 184-5 (ND 119-4; SD 65-1), Oct. 19, 1979.

523. HR 595. Strategic Materials Stockpile. Bennett, D-Fla., motion to close to the public, at such times as classified national security information was under consideration, but to allow any member of Congress to attend any of the closed sessions, the House-Senate conference on the bill to authorize the General Services Administration to dispose of tin in the national and supplemental stockpiles. Motion agreed to 358-0: R 139-0; D 219-0 (ND 145-0; SD 74-0), Oct. 19, 1979.

524. HR 2218. Endangered Species Act. Adoption of the rule (H Res 417) providing for floor consideration of the bill to authorize fiscal 1980-82 funds to carry out the provisions of the Endangered Species Act. Adopted 320-9: R 126-1; D 194-8 (ND 129-6; SD 65-2), Oct. 19, 1979.

525. HR 3683. Consolidated Farm and Rural Development. Foley, D-Wash., motion that the House resolve itself into the Committee of the Whole for further consideration of the bill to authorize lending levels for the Farmers Home Administration farm and rural development loan programs. Motion agreed to 298-3: R 119-0; D 179-3 (ND 117-2; SD 62-1), Oct. 19, 1979.

526. HR 4943. New York-New Jersey Port Authority Pact. Danielson, D-Calif., motion to suspend the rules and pass the bill to grant the consent of Congress, as provided by the Constitution, to the compact between New York and New Jersey providing for coordination and promotion of commerce in the Port of New York District by the financing of industrial development projects. Motion agreed to 412-0: R 152-0; D 260-0 (ND 180-0; SD 80-0), Oct. 23, 1979. A two-thirds majority vote (276 in this case) is required for passage under suspension of the rules.

527. S 1030. Emergency Energy Conservation. Adoption of the conference report on the bill to give states primary responsibility for energy conservation and to provide a reduced congressional role in approval of a standby gasoline rationing plan. Adopted (thus clearing the bill for the president) 301-112: R 71-82; D 230-30 (ND 157-20; SD 73-10), Oct. 23, 1979. A "yea" was a vote supporting the president's position.

528. HR 2172. International Sugar Agreement/Sugar Price Supports. Frenzel, R-Minn., amendment, to the Vanik, D-Ohio, amendment, to prohibit direct federal payments to sugar producers as part of a sugar price support program. Rejected 200-212: R 96-53; D 104-159 (ND 82-97; SD 22-62), Oct. 23, 1979. (The Vanik amendment, which was a technical one providing conforming language, was adopted subsequently by voice vote.)

529. HR 2172. International Sugar Agreement/Sugar Price Supports. Passage of the bill to implement the International Sugar Agreement, mandate the use of import fees to support the domestic price of sugar at 15.8 cents a pound in 1979 (with up to 7 percent increases in 1980 and 1981), provide for up to a half-cent a pound federal payment to producers (with a limit of \$50,000 per producer) and raise minimum wages for sugar field workers. Rejected 158-249: R 56-92; D 102-157 (ND 51-126; SD 51-31), Oct. 23, 1979. A "yea" was a vote supporting the president's position.

KEY		522	523	524	525	526	527	528	529
Y	Voted for (yea).								
#	Paired for.								
+	Announced for.								
N	Voted against (nay)								
X	Paired against.								
-	Announced against.								
P	Voted "present."								
C	Voted "present" to avoid possible conflict of interest.								
?	Did not vote or otherwise make a position known.								
		522	523	524	525	526	527	528	529
ALABAMA									
1	Edwards	Y	Y	Y	Y	Y	Y	Y	N
2	Dickinson	?	?	?	?	Y	N	N	N
3	Nichols	Y	Y	Y	Y	Y	Y	Y	N
4	Bewill	?	?	Y	?	Y	Y	Y	N
5	Flippo	?	?	?	?	Y	Y	Y	Y
6	Buchanan	?	Y	Y	Y	Y	Y	Y	N
7	Shelby	Y	Y	Y	Y	Y	Y	Y	N
ALASKA									
AL	Young	?	Y	Y	Y	Y	N	N	?
ARIZONA									
1	Rhodes	Y	Y	Y	?	Y	N	?	Y
2	Udall	Y	Y	Y	Y	Y	Y	Y	N
3	Stump	Y	Y	Y	Y	Y	N	N	Y
4	Rudd	Y	Y	Y	Y	Y	N	N	Y
ARKANSAS									
1	Alexander	Y	Y	?	?	Y	Y	Y	Y
2	Bethune	Y	Y	Y	Y	Y	Y	Y	N
3	Hammerschmidt	Y	Y	Y	Y	Y	Y	Y	N
4	Anthony	?	Y	Y	Y	Y	Y	Y	Y
CALIFORNIA									
1	Johnson	Y	Y	Y	Y	Y	Y	Y	N
2	Clausen	Y	Y	Y	Y	?	?	?	?
3	Matsui	Y	Y	Y	Y	Y	Y	Y	N
4	Fazio	?	?	?	?	Y	Y	Y	Y
5	Burton, J.	?	Y	N	?	Y	Y	Y	N
6	Burton, P.	Y	Y	Y	Y	Y	Y	Y	N
7	Miller	?	?	?	?	Y	Y	Y	N
8	Dellums	?	?	?	?	Y	Y	Y	N
9	Stark	Y	Y	Y	Y	Y	Y	Y	N
10	Edwards	Y	Y	Y	Y	Y	Y	Y	N
11	Royer	Y	Y	Y	Y	Y	Y	Y	Y
12	McCloskey	?	Y	Y	Y	Y	Y	Y	N
13	Mineta	Y	Y	Y	Y	Y	Y	Y	N
14	Shumway	Y	Y	Y	Y	Y	Y	Y	N
15	Coeelho	Y	Y	Y	Y	Y	Y	Y	N
16	Panetta	Y	Y	Y	Y	Y	Y	Y	N
17	Pashayan	Y	Y	Y	Y	Y	Y	Y	N
18	Thomas	Y	Y	Y	Y	Y	Y	Y	N
19	Lagomarsino	Y	Y	Y	?	Y	Y	Y	N
20	Goldwater	Y	Y	Y	Y	Y	Y	Y	N
21	Corman	Y	Y	Y	Y	Y	Y	Y	N
22	Moorhead	Y	Y	Y	Y	Y	Y	Y	N
23	Beilenson	Y	Y	N	Y	Y	Y	Y	N
24	Waxman	Y	Y	Y	?	Y	Y	Y	N
25	Raybal	Y	Y	?	?	Y	Y	Y	N
26	Rousselot	?	?	?	?	Y	N	Y	Y
27	Dornan	?	Y	Y	Y	Y	Y	Y	N
28	Dixon	?	?	Y	Y	Y	Y	Y	N
29	Hawkins	Y	Y	Y	Y	Y	Y	Y	N
30	Danielson	Y	Y	Y	Y	Y	Y	Y	N
31	Wilson, C.H.	?	?	?	?	Y	?	?	Y
32	Anderson	Y	Y	Y	Y	Y	Y	Y	N
33	Grisham	Y	Y	Y	Y	Y	Y	Y	N
34	Lungren	Y	Y	Y	?	Y	Y	Y	N
35	Lloyd	N	Y	Y	N	Y	Y	Y	N
36	Brown	?	?	?	?	Y	Y	Y	N
37	Lewis	Y	Y	Y	Y	Y	Y	Y	N
38	Patterson	Y	Y	Y	Y	Y	Y	Y	N
39	Dannemeyer	Y	Y	Y	Y	Y	Y	Y	N
40	Badham	Y	?	?	?	Y	N	Y	Y
41	Wilson, B.	N	Y	?	?	Y	N	Y	Y
42	Van Deelen	?	?	?	?	Y	Y	Y	N
43	Burgener	Y	Y	?	?	?	?	?	?
COLORADO									
1	Schroeder	N	Y	Y	Y	Y	N	Y	Y
2	Wirth	?	?	?	?	Y	Y	Y	Y
3	Kogovsek	?	?	?	?	Y	Y	Y	Y
4	Johnson	Y	Y	?	?	Y	N	Y	Y
CONNECTICUT									
5	Kramer	Y	Y	Y	Y	Y	N	N	Y
1	Cotter	?	?	?	?	Y	Y	Y	N
2	Dodd	Y	Y	Y	Y	Y	Y	Y	N
3	Gianna	Y	Y	Y	Y	Y	Y	Y	N
4	McKinney	Y	Y	Y	Y	Y	Y	Y	N
5	Ratchford	Y	Y	Y	Y	Y	Y	Y	N
6	Moffett	?	?	?	?	Y	Y	Y	N
DELAWARE									
AL	Evans	Y	Y	Y	Y	Y	Y	Y	N
FLORIDA									
1	Hutto	Y	Y	Y	Y	Y	Y	Y	Y
2	Fuqua	Y	?	?	?	Y	Y	Y	N
3	Bennett	Y	Y	Y	Y	Y	Y	Y	Y
4	Chappell	Y	Y	Y	Y	Y	Y	Y	N
5	Kelly	Y	Y	Y	Y	Y	Y	Y	N
6	Young	Y	?	?	?	Y	Y	Y	N
7	Gibbons	?	?	?	?	Y	Y	Y	N
8	Ireland	Y	?	?	?	Y	Y	Y	N
9	Nelson	Y	Y	Y	Y	Y	Y	Y	N
10	Bafalis	Y	Y	Y	?	?	N	Y	N
11	Mica	Y	Y	Y	Y	Y	Y	Y	N
12	Stack	Y	Y	N	Y	Y	Y	Y	N
13	Lehman	Y	Y	Y	Y	Y	Y	Y	N
14	Pepper	?	Y	?	?	Y	Y	Y	N
15	Fascell	Y	Y	Y	Y	Y	Y	Y	N
GEORGIA									
1	Ginn	Y	Y	Y	Y	Y	Y	Y	N
2	Mathis	?	Y	Y	Y	Y	Y	Y	N
3	Brinkley	Y	Y	Y	Y	Y	Y	Y	N
4	Levitas	Y	Y	Y	Y	Y	Y	Y	N
5	Fowler	Y	Y	Y	Y	Y	Y	Y	N
6	Gingrich	Y	Y	Y	Y	Y	Y	Y	N
7	McDonald	?	Y	N	N	X	N	Y	N
8	Evans	?	?	?	?	Y	Y	?	N
9	Jenkins	Y	Y	Y	Y	?	?	?	?
10	Barnard	Y	Y	Y	Y	Y	Y	Y	N
HAWAII									
1	Heftel	?	Y	Y	Y	Y	Y	Y	N
2	Akaka	Y	Y	Y	Y	Y	Y	Y	N
IDAHO									
1	Symms	Y	Y	Y	Y	Y	N	N	Y
2	Hansen	Y	Y	Y	Y	Y	Y	Y	N
ILLINOIS									
1	Stewart	Y	Y	Y	?	Y	Y	Y	N
2	Murphy	?	?	?	?	Y	Y	Y	N
3	Russo	Y	Y	Y	Y	Y	Y	Y	N
4	Derwinski	Y	Y	Y	Y	Y	Y	Y	N
5	Fary	Y	Y	Y	Y	Y	Y	Y	N
6	Hyde	Y	Y	Y	Y	Y	?	?	?
7	Collins	?	?	?	?	Y	Y	Y	N
8	Rostenkowski	Y	Y	?	?	Y	Y	Y	N
9	Yates	Y	Y	Y	Y	Y	Y	Y	N
10	Vacancy								
11	Annunzio	Y	Y	Y	Y	Y	Y	Y	N
12	Crane, P.	?	?	?	?	Y	Y	Y	N
13	McClory	Y	Y	Y	Y	Y	Y	Y	N
14	Erlenborn	Y	Y	Y	Y	Y	Y	Y	N
15	Corcoran	Y	Y	Y	Y	Y	Y	Y	N
16	Anderson	?	?	?	?	?	?	?	?
17	O'Brien	Y	Y	Y	Y	Y	Y	Y	N
18	Michel	Y	Y	?	?	Y	Y	Y	Y
19	Railsback	Y	Y	?	?	Y	Y	Y	N
20	Findley	?	Y	Y	Y	Y	Y	Y	N
21	Madigan	Y	Y	Y	Y	Y	Y	Y	N
22	Crane, D.	Y	Y	Y	Y	Y	Y	Y	N
23	Price	Y	Y	Y	Y	Y	Y	Y	N
24	Simon	?	Y	Y	Y	Y	Y	Y	N
INDIANA									
1	Benjamin	Y	Y	Y	Y	Y	Y	Y	N
2	Fithian	Y	Y	Y	?	Y	Y	Y	Y
3	Brademas	Y	Y	Y	Y	Y	Y	Y	N
4	Quayle	N	Y	?	?	Y	Y	Y	N
5	Hillis	?	Y	?	?	Y	Y	Y	Y
6	Evans	Y	Y	Y	?	Y	Y	Y	Y
7	Myers	Y	Y	Y	Y	Y	Y	Y	N
8	Deckard	Y	Y	Y	Y	Y	Y	Y	N
9	Hamilton	Y	Y	Y	?	Y	Y	Y	N
10	Sharp	Y	Y	Y	Y	Y	Y	Y	N
11	Jacobs	N	Y	Y	Y	Y	Y	Y	N
IOWA									
1	Leach	Y	Y	Y	Y	Y	Y	Y	N
2	Tauke	Y	Y	Y	Y	Y	Y	Y	Y
3	Grassley	Y	Y	Y	Y	Y	Y	Y	Y
4	Smith	Y	Y	?	?	Y	Y	Y	Y
5	Harkin	Y	Y	Y	Y	Y	Y	Y	Y
6	Bedell	Y	Y	Y	Y	Y	Y	Y	Y

Democrats Republicans

Corresponding to Congressional Record Votes 584, 585, 586, 587, 588, 589, 590, 591

	522	523	524	525	526	527	528	529		522	523	524	525	526	527	528	529		522	523	524	525	526	527	528	529		522	523	524	525	526	527	528	529
KANSAS																																			
1 Sebelius	Y	Y	Y	Y	Y	N	N	Y		4 Skelton	Y	Y	Y	Y	Y	N	N	Y		9 Martin	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	
2 Jeffries	Y	Y	Y	Y	Y	N	N	Y		5 Bolling	Y	Y	Y	Y	Y	N	N	Y		10 Brayhill	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
3 Winn	Y	Y	Y	Y	Y	Y	Y	Y		6 Coleman	Y	Y	Y	Y	Y	N	N	Y		11 Gudge	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
4 Glickman	Y	Y	Y	Y	Y	Y	Y	Y		7 Taylor	Y	Y	Y	Y	Y	N	N	Y		NORTH DAKOTA															
5 Whittaker	Y	Y	Y	Y	Y	N	N	Y		8 Ichard	Y	Y	Y	Y	Y	N	N	Y		AL Andrews	Y	Y	Y	Y	Y	N	N	Y							
KENTUCKY										9 Volkmer	Y	Y	Y	Y	Y	N	N	Y		OHIO															
1 Hubbard	Y	Y	Y	Y	Y	Y	N	N		10 Burlison	Y	Y	Y	Y	Y	N	N	Y		1 Gradison	Y	Y	Y	Y	Y	N	N	Y							
2 Natcher	Y	Y	Y	Y	Y	Y	N	N		MONTANA										2 Luken	Y	Y	Y	Y	Y	N	N	Y							
3 Mazzoli	Y	Y	Y	Y	Y	Y	N	N		1 Williams	Y	Y	Y	Y	Y	N	N	Y		3 Hall	Y	Y	Y	Y	Y	N	N	Y							
4 Snyder	Y	Y	Y	Y	Y	Y	N	N		2 Marlenee	Y	Y	Y	Y	Y	N	N	Y		4 Guyer	Y	Y	Y	Y	Y	N	N	Y							
5 Carter	Y	Y	Y	Y	Y	Y	N	N		NEBRASKA										5 Latta	Y	Y	Y	Y	Y	N	N	Y							
6 Hopkins	Y	Y	Y	Y	Y	Y	N	N		1 Bereuter	Y	Y	Y	Y	Y	N	N	Y		6 Harsha	Y	Y	Y	Y	Y	N	N	Y							
7 Perkins	Y	Y	Y	Y	Y	Y	N	N		2 Cavanaugh	Y	Y	Y	Y	Y	N	N	Y		7 Brown	Y	Y	Y	Y	Y	N	N	Y							
LOUISIANA										3 Smith	Y	Y	Y	Y	Y	N	N	Y		8 Kindness	Y	Y	Y	Y	Y	N	N	Y							
1 Livingston	Y	Y	Y	Y	Y	Y	N	N		NEVADA										9 Ashley	Y	Y	Y	Y	Y	N	N	Y							
2 Boggs	Y	Y	Y	Y	Y	Y	N	N		AL Santini	Y	Y	Y	Y	Y	N	N	Y		10 Miller	Y	Y	Y	Y	Y	N	N	Y							
3 Trean	Y	Y	Y	Y	Y	Y	N	N		NEW HAMPSHIRE										11 Stanton	Y	Y	Y	Y	Y	N	N	Y							
4 Leach	Y	Y	Y	Y	Y	Y	N	N		1 D'Amours	Y	Y	Y	Y	Y	N	N	Y		12 Devine	Y	Y	Y	Y	Y	N	N	Y							
5 Huckaby	Y	Y	Y	Y	Y	Y	N	N		2 Cleveland	Y	Y	Y	Y	Y	N	N	Y		13 Pease	Y	Y	Y	Y	Y	N	N	Y							
6 Moore	Y	Y	Y	Y	Y	Y	N	N		NEW JERSEY										14 Seiberling	Y	Y	Y	Y	Y	N	N	Y							
7 Breaux	Y	Y	Y	Y	Y	Y	N	N		1 Florio	Y	Y	Y	Y	Y	N	N	Y		15 Wylie	Y	Y	Y	Y	Y	N	N	Y							
8 Long	Y	Y	Y	Y	Y	Y	N	N		2 Hughes	Y	Y	Y	Y	Y	N	N	Y		16 Regula	Y	Y	Y	Y	Y	N	N	Y							
MAINE										3 Howard	Y	Y	Y	Y	Y	N	N	Y		17 Ashbrook	Y	Y	Y	Y	Y	N	N	Y							
1 Emery	Y	Y	Y	Y	Y	Y	N	N		4 Thompson	Y	Y	Y	Y	Y	N	N	Y		18 Applegate	Y	Y	Y	Y	Y	N	N	Y							
2 Snowe	Y	Y	Y	Y	Y	Y	N	N		5 Fenwick	Y	Y	Y	Y	Y	N	N	Y		19 Williams	Y	Y	Y	Y	Y	N	N	Y							
MARYLAND										6 Forsythe	Y	Y	Y	Y	Y	N	N	Y		20 Oaker	Y	Y	Y	Y	Y	N	N	Y							
1 Bauman	Y	Y	Y	Y	Y	N	N	N		7 Maguire	Y	Y	Y	Y	Y	N	N	Y		21 Stokes	Y	Y	Y	Y	Y	N	N	Y							
2 Long	Y	Y	Y	Y	Y	N	N	N		8 Roe	Y	Y	Y	Y	Y	N	N	Y		22 Vanik	Y	Y	Y	Y	Y	N	N	Y							
3 Mikulski	Y	Y	Y	Y	Y	Y	N	N		9 Hollenbeck	Y	Y	Y	Y	Y	N	N	Y		23 Mohl	Y	Y	Y	Y	Y	N	N	Y							
4 Holt	Y	Y	Y	Y	Y	Y	N	N		10 Rodino	Y	Y	Y	Y	Y	N	N	Y		OKLAHOMA															
5 Spellman	Y	Y	Y	Y	Y	Y	N	N		11 Minish	Y	Y	Y	Y	Y	N	N	Y		1 Jones	Y	Y	Y	Y	Y	N	N	Y							
6 Byron	Y	Y	Y	Y	Y	Y	N	N		12 Rinaldo	Y	Y	Y	Y	Y	N	N	Y		2 Synar	Y	Y	Y	Y	Y	N	N	Y							
7 Mitchell	Y	Y	Y	Y	Y	Y	N	N		13 Courter	Y	Y	Y	Y	Y	N	N	Y		3 Watkins	Y	Y	Y	Y	Y	N	N	Y							
8 Barnes	Y	Y	Y	Y	Y	Y	N	N		14 Guarini	Y	Y	Y	Y	Y	N	N	Y		4 Steed	Y	Y	Y	Y	Y	N	N	Y							
MASSACHUSETTS										15 Patten	Y	Y	Y	Y	Y	N	N	Y		5 Edwards	Y	Y	Y	Y	Y	N	N	Y							
1 Conte	Y	Y	Y	Y	Y	Y	N	N		NEW MEXICO										6 English	Y	Y	Y	Y	Y	N	N	Y							
2 Boland	Y	Y	Y	Y	Y	Y	N	N		1 Lujan	Y	Y	Y	Y	Y	N	N	Y		OREGON															
3 Early	Y	Y	Y	Y	Y	Y	N	N		2 Runnels	Y	Y	Y	Y	Y	N	N	Y		1 AuCoin	Y	Y	Y	Y	Y	N	N	Y							
4 Drinan	Y	Y	Y	Y	Y	Y	N	N		NEW YORK										2 Ullman	Y	Y	Y	Y	Y	N	N	Y							
5 Shannon	Y	Y	Y	Y	Y	Y	N	N		1 Carney	Y	Y	Y	Y	Y	N	N	Y		3 Duncan	Y	Y	Y	Y	Y	N	N	Y							
6 Mavroules	Y	Y	Y	Y	Y	Y	N	N		2 Downey	Y	Y	Y	Y	Y	N	N	Y		4 Weaver	Y	Y	Y	Y	Y	N	N	Y							
7 Markey	Y	Y	Y	Y	Y	Y	N	N		3 Ambro	Y	Y	Y	Y	Y	N	N	Y		PENNSYLVANIA															
8 O'Neill	Y	Y	Y	Y	Y	Y	N	N		4 Lent	Y	Y	Y	Y	Y	N	N	Y		1 Myers	Y	Y	Y	Y	Y	N	N	Y							
9 Mookley	Y	Y	Y	Y	Y	Y	N	N		5 Wylder	Y	Y	Y	Y	Y	N	N	Y		2 Gray	Y	Y	Y	Y	Y	N	N	Y							
10 Heckler	Y	Y	Y	Y	Y	Y	N	N		6 Wolff	Y	Y	Y	Y	Y	N	N	Y		3 Lederer	Y	Y	Y	Y	Y	N	N	Y							
11 Donnelly	Y	Y	Y	Y	Y	Y	N	N		7 Addabbo	Y	Y	Y	Y	Y	N	N	Y		4 Dougherty	Y	Y	Y	Y	Y	N	N	Y							
12 Studds	Y	Y	Y	Y	Y	Y	N	N		8 Rosenthal	Y	Y	Y	Y	Y	N	N	Y		5 Schulze	Y	Y	Y	Y	Y	N	N	Y							
MICHIGAN										9 Ferraro	Y	Y	Y	Y	Y	N	N	Y		6 Yatron	Y	Y	Y	Y	Y	N	N	Y							
1 Conyers	Y	Y	Y	Y	Y	Y	N	N		10 Biaggi	Y	Y	Y	Y	Y	N	N	Y		7 Edgar	Y	Y	Y	Y	Y	N	N	Y							
2 Pussell	Y	Y	Y	Y	Y	Y	N	N		11 Scheuer	Y	Y	Y	Y	Y	N	N	Y		8 Kostmayer	Y	Y	Y	Y	Y	N	N	Y							
3 Wolpe	Y	Y	Y	Y	Y	Y	N	N		12 Chisholm	Y	Y	Y	Y	Y	N	N	Y		9 Shuster	Y	Y	Y	Y	Y	N	N	Y							
4 Stockman	Y	Y	Y	Y	Y	Y	N	N		13 Solarz	Y	Y	Y	Y	Y	N	N	Y		10 McDade	Y	Y	Y	Y	Y	N	N	Y							
5 Sawyer	Y	Y	Y	Y	Y	Y	N	N		14 Richmond	Y	Y	Y	Y	Y	N	N	Y		11 Flood	Y	Y	Y	Y	Y	N	N	Y							
6 Carr	Y	Y	Y	Y	Y	Y	N	N		15 Zeferetti	Y	Y	Y	Y	Y	N	N	Y		12 Murtha	Y	Y	Y	Y	Y	N	N	Y							
7 Kildee	Y	Y	Y	Y	Y	Y	N	N		16 Holtzman	Y	Y	Y	Y	Y	N	N	Y		13 Caughlin	Y	Y	Y	Y	Y	N	N	Y							
8 Traxler	Y	Y	Y	Y	Y	Y	N	N		17 Murphy	Y	Y	Y	Y	Y	N	N	Y		14 Moorhead	Y	Y	Y	Y	Y	N	N	Y							
9 Vander Jagt	Y	Y	Y	Y	Y	Y	N	N		18 Green	Y	Y	Y	Y	Y	N	N	Y		15 Ritter	Y	Y	Y	Y	Y	N	N	Y							
10 Albosta	Y	Y	Y	Y	Y	Y	N	N		19 Rangel	Y	Y	Y	Y	Y	N	N	Y		16 Walker	Y	Y	Y	Y	Y	N	N	Y							
11 Davis	Y	Y	Y	Y	Y	Y	N	N		20 Weiss	Y	Y	Y	Y	Y	N	N	Y		17 Ertel	Y	Y	Y	Y	Y	N	N	Y							
12 Bonior	Y	Y	Y	Y	Y	Y	N	N		21 Garcia	Y	Y	Y	Y	Y	N	N	Y		18 Walgren	Y	Y	Y	Y	Y	N	N	Y							
13 Diggs	Y	Y	Y	Y	Y	Y	N	N		22 Bingham	Y	Y	Y	Y	Y	N	N	Y		19 Goodling	Y	Y	Y	Y	Y	N	N	Y							
14 Nedzi	Y	Y	Y	Y	Y																														

should be on exception
 - Index
 - Lag
 - Agency
 - EPA
 - Council Exec Admin
 - Just Admin - Commerce
 - Reg Team
 - Res State - named
 - US Pres.
 - Boston
 TELLICO DAM

action → logging
 X Dictate by which
 plans to use -
 These plans do
 not take into
 account that
 otter is a threatened species

1. Agency
 2. ETS
 3. Dam

It is instructive to note that, in the twelve years of its
 existence, the Endangered Species Committee has only had to
 resolve two such conflicts, the Tellico Dam case in Tennessee and
 the Grayrocks Dam case in Wyoming. In the Tellico Dam case, the
 Committee declined to exempt the project from the Endangered
 Species Act, leaving the ultimate decision to complete the
 project to Congress. And in the Grayrocks Dam case, the
 Committee granted an exemption to the project.

The situation today is not at all analogous to that of the
 snail darter and the Tellico Dam some twelve years ago. As a
 result of that conflict, Congress amended the Act to allow for
 the exemption of certain federal actions that met strict
 criteria. That exemption process was intended to be a matter of
 last resort. Congress did not legislate with respect to Tellico
 Dam until all the other processes of the Act and the courts had
 been exhausted. Tellico Dam had been completely through the
 Section 7 consultation process and it had been through the court
 system -- even the United States Supreme Court. The result was
 an injunction from which no further appeal was available.

42447

Jack Ward Thomas
consultation →

Recommendation
in to be to protect
spotted Owl

The situation before us today is diametrically the opposite of the Tellico Dam case. The Act's consultation process has not yet resulted in a finding of jeopardy with respect to even one timber sale. No injunction from even the lowest of the federal courts is based on any violation of the Endangered Species Act. Congress is being asked to step in and make the exemption process a matter of first resort. Such an amendment is unprecedented and unnecessary.

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